

# SECRECY AND DEMOCRACY: THE CONFLICT BETWEEN AMERICAN IDEALS AND AMERICAN INSTITUTIONS

A Monograph

by

Megan K. Kraushaar, GS-14  
Department of Defense



School of Advanced Military Studies  
United States Army Command and General Staff College  
Fort Leavenworth, Kansas

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Name of Candidate: Megan K. Kraushaar

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Approved by:

\_\_\_\_\_, Monograph Director  
Michael D. Mihalka, Ph.D.

\_\_\_\_\_, Seminar Leader  
Michael R. Anderson, LTC, EN

\_\_\_\_\_, Director, School of Advanced Military Studies  
Henry A. Arnold III, COL, IN

Accepted this 22nd day of May 2014 by:

\_\_\_\_\_, Director, Graduate Degree Programs  
Robert F. Baumann, Ph.D.

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## ABSTRACT

SECRECY AND DEMOCRACY: THE CONFLICT BETWEEN AMERICAN IDEALS AND AMERICAN INSTITUTIONS, by Megan K. Kraushaar, Department of Defense, 60 pages.

Samuel Huntington wrote about the conflict between American ideals and American institutions in 1982, identifying four episodes in which the U.S. attempted to restore the values of liberty, equality, liberal democracy, and popular sovereignty to the institutions of government. The U.S. may well be experiencing a similar episode after the experience of September 11, 2001 and subsequent security reforms. Secrecy, necessary for the function of the military and capable governance, poses a challenge to each of the foundational American ideals. Reconciling the requirements of secrecy with the people's demand for transparency and publicity poses several challenges to the U.S. government.

Changes in information technology, culture, and social dynamics all exacerbate the existing tensions between the executive, legislature, media, and the people. The U.S. military exists between these actors and must balance the requirements of defending the nation while adhering to its values. Current dynamics in the domestic and international arena could lead to significant challenges to the state, apart from as well as involving the military. In order to preserve necessary secrecy while implementing American values, the U.S. should guard against the instantiation of a garrison state, prevent the formation of a praetorian class, preserve a diversity of views despite insider threats, reform institutions based on the existing threat and strategic interests rather than political equities, and trade spectacle revelation for meaningful discourse about the meaning of American democracy.

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Real power begins where secrecy begins<sup>1</sup>  
— Hannah Arendt, *The Burden of our Time*)

## INTRODUCTION

The United States was born in secrecy. In 1787, the Constitutional Convention convened in secret, and remained sequestered until a government of compromises emerged. Participants stated the Convention would have failed without secrecy, as delegates could not have compromised if their negotiations became known to the public.<sup>2</sup> The Anti-Federalist Papers challenged the wisdom of the Federalists, and argued that the convocation of the Convention in secrecy was not an effort at creating consensus, but instead an illustration of tyranny returning to govern the colonies.<sup>3</sup> The U.S. has struggled with the balance between governance and secrecy since its very inception.

Secrecy serves a purpose at an individual as well as social level. Without secrecy, the individual cannot construct meaningful boundaries between what is private and what is public, and lives in a state of constant exposure to the eyes of others.<sup>4</sup> Rather than the utopia of a free and open society, individuals without the means to exercise secrecy would find themselves in a totalitarian, Orwellian nightmare. Secrets are vital for both the psychological comfort of the individual as well as the successful operation of society, although modern discourse has created a dialectical relationship between secrecy and transparency, privacy and publicity, that undermines

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<sup>1</sup>Hannah Arendt, *The Burden of our Time* (London: Secker and Warburg, 1951), 386.

<sup>2</sup>Daniel N. Hoffman, *Governmental Secrecy and the Founding Fathers: A Study in Constitutional Controls* (London: Greenwood Press, 1981), 20-23.

<sup>3</sup>*Ibid.*, 178-219.

<sup>4</sup>Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation* (New York: Vintage Books, 1989), 18-24.

the utility of secrecy in the public sphere. Clandestine political and social organization provided the space necessary for the emergence of the public sphere.<sup>5</sup>

Executive privilege, the secrecy of Congressional deliberations, and the 'right to know' have all been debated extensively since the original Constitutional Convention met in secret. Popular arguments contend the Congress, the media, and the people are afforded the "right to know" information from the government in order to check the power of the government writ large and specifically the executive branch and the president himself. The right to know, as an ill-defined concept with no agreed-upon limits or obligations, remains a rallying cry of convenience against the government, the presidency, and the defense and security sectors. Most theorists acknowledge the executive, and particularly the military, right to conceal, in order to protect the state and enable the government to provide security for its citizens. How much, how long, and what specifically the military can conceal from the public, the media, and Congress is a contentious and frequently changing concept. Debates about propriety, accountability, and secrecy gained steam during the 1970s,<sup>6</sup> but reached a new level of hysteria with the emergence of the "politics of everyday fear" following the terrorist attacks of September 11, 2001 and the emergence of pervasive surveillance mechanisms.<sup>7</sup>

Samuel Huntington wrote in 1982 about the inherent tension between American ideals and American institutions.<sup>8</sup> This tension, rather than abating in the decades since Huntington's observations, has been exacerbated by social, technological, and political changes among the

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<sup>5</sup>Georg Simmel, "The Sociology of Secrecy and of Secret Societies," *American Journal of Sociology* 11, no. 4 (January 1906): 441-498.

<sup>6</sup>LTC John C. Green, "Secret Intelligence and Covert Action: Consensus in an Open Society (U)" (US Army War College Study Project. Carlisle Barracks, PA, March 19, 1993).

<sup>7</sup>Jack Bratich, "Public Secrecy and Immanent Security: A Strategic Analysis," *Cultural Studies* 20, no. 4-5 (July-September 2006): 493-511.

<sup>8</sup>Samuel Huntington, "American Ideals versus American Institutions," *Political Science Quarterly* 97, no. 1 (Spring 1982): 1-37.



American public. The gap whereby Americans struggle to match the function and performance of their national institutions to their most dearly-held ideals has only grown, to the point where it appears almost unbridgeable. The relationships intended to balance secrecy and transparency in U.S. government are strained by contradictions in social, economic, political, and technological realities.

One institution, the military, occupies a unique position in the structure of both American institutions and ideals. The concealment of military and defense information is vital to the survival of the state.<sup>9</sup> What should be kept secret, who should decide what is kept secret, who decides who has access, and how long secrets will remain concealed are all legitimate points of debate within the social sciences as well as the military itself. What is problematic for the military is not the type or depth of secrecy, but rather the value that secrecy has in the current moral discourse of secrecy and transparency.<sup>10</sup> The perverse incentives, competing advantages, and currency of information create tensions within the American system that are pulling the executive branch, legislative branch, media, and public away from each other, with the military largely stuck in the middle.

The contradictions between American values and American institutions are exacerbated by emerging social and technological trends, and as a result pose challenges to the U.S. government and military ability to provide security in the twenty-first century. A sense of being threatened both by external forces and internal contradictions, but a lack of a clear threat, prevents a meaningful national conversation about the role of secrecy, and particularly the military, in American governance.

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<sup>9</sup>Steven Aftergood, "National Security Secrecy: How the Limits Change," *Social Research* 77, no. 3 (Fall 2010): 839-852.

<sup>10</sup>Clare Birchall, "Introduction to 'Secrecy and Transparency': The Politics of Opacity and Openness," *Theory Culture Society* 28, no. 7-8 (December 2011): 7-25.

## HUNTINGTON'S IDEALS AND INSTITUTIONS

In 1982, Huntington wrote about the gap between American ideals and American institutions. He identified four periods of "creedal passion" in which the U.S. rebelled against the existing manifestation of American values and attempted to reconstitute the founding ideals into the structures of government to more accurately reflect equality, liberty, democracy, and popular sovereignty. He also predicted four possible outcomes if the gap between ideals and institutions persisted: changing the ideals; the degree to which society agreed about those ideals could change; political institutions could more closely reflect American ideals; or political institutions could be altered in an illiberal manner.<sup>11</sup> The first two eras of creedal passion, the Revolutionary years in the 1760s and 1770s and the Jacksonian reforms of the 1820s and 1830s, attempted to reconcile the destruction of traditional institutions with the progressive realization of liberal ideals. The latter two periods, the Progressive era from the 1890s to 1914 and the moralistic reforms of the 1960s and 1970s, attempted to eliminate or modify institutions that emerged from historical development, and focused more on "the restoration of the past than the realization of the future."<sup>12</sup>

The years following the initiation of Operation Iraqi Freedom in 2003 could mark the beginning of a fifth period of "creedal passion" as the meanings and application of American values are renegotiated and reinterpreted in light of a changing world. The 1970s episode of creedal passion drove social reform, civil rights, and social investment as a means of combating a clear threat from Communism.<sup>13</sup> In contrast, the post-2003 episode is marked by increased state surveillance, the expansion of the security sector, and a Long War against an ill-defined and

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<sup>11</sup>Huntington, "American Ideals versus American Institutions," 2.

<sup>12</sup>Ibid.

<sup>13</sup>David S. Meyer, "Constructing Threats and Opportunities after 9/11," *American Behavioral Scientist* 53, no. 1 (September 2009): 10-26.

pervasive adversary. What reforms, if any, this most recent creedal passion will give rise to remains to be seen. What is clear, however, is that the military is one of the institutions most caught in the gap between what should be and what is. The military attempts to hew to the values and ideals of the U.S., and acts as a reflection of those values when abroad, however a founding value of "no standing armies" can be somewhat problematic for a large, professional, standing American military.<sup>14</sup>

Comparisons of other security institutions with American institutions are not particularly helpful, even with a close cousin such as the United Kingdom. Though similar now in values and ideology, the UK secret services existed for centuries as servants of the crown first before becoming servants of the people.<sup>15</sup> Questions of accountability, the Official Secrets Act, and legitimacy plague the UK as surely as the secrecy-transparency dichotomy plagues the U.S., however the unique historical and social circumstances of each country mean comparisons have only limited value.<sup>16</sup> The U.S. resisted the need for a professional intelligence service and large professional military until after the Second World War and the emergence of the Communist existential threat. The discomfort Americans have with the dirty tricks and dirty hands of its security services, both military and intelligence, persists because of the founding ideals of the U.S. This discomfort will never be truly reconciled, given that the concealment and secrecy of the security services are perceived as antithetical to open and free democracy.

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<sup>14</sup>Thomas E. Ricks, "Mac Owens on the Forgotten Dimensions of American Civil-Military Relations," Posted August 6, 2012, Ricks' blog; Daniel Wirls, "Congress and the Politics of Military Reform," *Armed Forces and Society* 17, no. 4 (Summer 1991): 487-512.

<sup>15</sup>K. G. Robertson, *Public Secrets: A Study in the Development of Government Secrecy* (London: Macmillan Press, 1982), 41-91.

<sup>16</sup>David Williams, *Not in the Public Interest: The Problem of Security in Democracy* (London: Hutchinson Press, 1965), 15-38; Scilla Elworthy, "Balancing the Need for Secrecy with the need for Accountability," *RUSI Journal* 143, no. 1 (February 1998): 5-8.

Huntington, writing at a time of increased growth for the military industrial complex in light of the Cold War, could not have predicted the vast technological and informational changes that occurred after the fall of the Soviet Union. Rather than closing the gap between ideals and implementation, the social and cultural changes instead exacerbated the existing gap and introduced additional frictions to the relationship between the military and the structures of the society it defends. If the U.S. is indeed in a fifth period of creedal passion, in which the government and people attempt to re-introduce the Founding ideals and reinstitute more open and liberal government, this does not bode well for the military or the security infrastructure of the U.S. Each of the previous periods, according to Huntington, also initiated a decrease in military and intelligence funding and support.<sup>17</sup> In order to understand the forces currently at work in American society, it is beneficial to examine the changing nature of American ideals and how these trends affect American institutions.

#### AMERICAN IDEALS

Huntington identified four central ideals in American society: equality, liberty, liberal democracy, and popular sovereignty. State secrecy challenges each of these ideals in a fundamental way, exacerbating the separation between these ideals and American institutions, including the military.<sup>18</sup> The ideal of transparency, so developed in the modern age, led to the concept of the government secret "as both necessary and noxious, something constantly in need of legitimization yet never really legitimate."<sup>19</sup> State secrecy occupies a complex and pervasive area of political and social theory, and works according to a variety of logics.

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<sup>17</sup>Huntington, "American Ideals versus American Institutions."

<sup>18</sup>Bok, 171-190.

<sup>19</sup>Eva Horn, "Logics of Political Secrecy," *Theory, Culture, and Society* 28, no. 7-8 (December 2011): 105.

Horn examines three logics of secrecy: first, the idea of mysterium, to which belongs the unknowable or mystical; second, arcanum, that which is hidden and locked away; and third, secretum, which is a relationship "between the known and unknown, between those who suspect and those who are 'supposed to know.'"<sup>20</sup>

The government views its secrets historically as arcana, something hidden and protected from prying eyes in the name of security, while the logic of secretum dominates the public's views of secrecy and government. Secretum is the most problematic and yet the most dominant, in that the modern American culture of revelation emphasizes the definitions of those who know and those who do not. As a relationship, secretum cannot be revealed or proven in an objective sense, while arcana can be revealed or disclosed. Both truth and secrecy, "based originally on information and subsequently on relationships, are critical to group stability" through the definition of status, power, and alliances.<sup>21</sup>

The changing relationship between those who know and those who do not has significant implications for the American ideals identified by Huntington. The security infrastructure and the relationships of secretum separate insiders from outsiders, functioning as security ritual as well as unintended social consequence challenging equality.<sup>22</sup> Technology exacerbates this gap and accelerates the speed at which collective identities, categories of being, and social status are constructed, categorized, and deconstructed. The resulting boundary politics contribute to the

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<sup>20</sup>Ibid., 108-109.

<sup>21</sup>Gary Alan Fine and Lori Holyfield, "Secrecy, Trust, and Dangerous Leisure: Generating Group Cohesion in Voluntary Organizations," *Social Psychology Quarterly* 59, no. 1 (March 1996): 22-38.

<sup>22</sup>Vida Bajc, "Surveillance in Public Rituals: Security Meta-Ritual and the 2005 U.S. Presidential Inauguration," *American Behavioral Scientist* 50, no. 12 (August 2007): 1648-1673, discusses the security meta-ritual of the post-9/11 American security infrastructure, particularly as it designates 'insiders' and 'outsiders' through categorization of identities and mechanisms of surveillance. Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* (Cambridge: Cambridge University Press, 2006), 27-50, discusses the relationship between secrecy and security as a good.

perception of government overreach and violation of liberal democratic ideals, even as openness and transparency are elevated to an ultimate public good<sup>23</sup> and the democratization of technology and upload-download capabilities challenge state control of information and censorship.<sup>24</sup> The modern "technoculture materializes the belief that the key to democracy can be found in uncovering the secrets" hidden by those in power, increasing calls for transparency and openness in the name of America's foundational ideals.<sup>25</sup>

### Equality

Separations within society based on access and information directly challenge the American ideal of equality. Secrecy serves a purpose as "an organizing principle of social relations" across the board and not just as a matter of the public sector's relationship to society, and can influence "states of knowledge, positions of power, bonds of allegiance or intentions of betrayal."<sup>26</sup> Equality before the law is a driving force in American society, and continues to be a matter of debate and contention. Though universal suffrage provides the perception of equality, another area of inequality persists related to knowledge, information, and power.

Dean explores the way secrets structure society, based on Bentham's ideas of the public supposed to know and the public supposed to believe. In particular, Dean claims "the public is actually split into three classes—the many who have no time for public affairs, the middle who believe through the judgment of others, and the few who judge for themselves on the basis of the

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<sup>23</sup>Dave Boothroyd, "Off the Record: Levinas, Derrida, and the Secret of Responsibility," *Theory Culture Society* 28, no. 7-8 (December 2011): 41-59.

<sup>24</sup>Julie E. Cohen, "The Inverse Relationship between Secrecy and Privacy," *Social Research* 77, no. 3 (Fall 2010): 883-898.

<sup>25</sup>Jodi Dean, "Publicity's Secret," *Political Theory* 29, no. 5 (October 2001): 646.

<sup>26</sup>Horn, 110.

available information."<sup>27</sup> The vast majority of the public falls into the first category, and is more likely to pursue self-interest than politics, relying on others to deal with the intricacies and difficulties of politics and governance. The second group is Bentham's "public supposed to believe," which is the group of individuals who have an awareness of the political process but neither the time nor the inclination to become heavily involved in the process. Instead, the public supposed to believe relies on the third group, the public supposed to know, to make decisions and implement processes on their behalf, relying on this group to judge correctly.<sup>28</sup> The public supposed to know in theory is composed of those individuals most concerned with justice and public welfare, and those most capable of creating and sustaining a beneficial society. Whether this is or is not the case is debatable, particularly as power aggregates to the public supposed to know through structural and institutional processes and the public interest in access to information degrades.<sup>29</sup>

The difficulty of gaining and seeking information in the past centuries the general public from joining the public supposed to know unless they were truly dedicated and capable of gaining access to a certain level of knowledge and society. As the information revolution and advances in technology made information more readily available, and a culture of revelation inculcated the know-ability of everything, the public supposed to believe stopped believing. The public supposed to know still knew, or at least convinced itself it knew, just as the public supposed to believe wished to know instead of just believe. The secrecy that separated the public supposed to know from the public supposed to believe was no longer constructed by education and distance and access, but instead by conspiracy and the sense that the public supposed to know hid

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<sup>27</sup>Dean, "Publicity's Secret," 629.

<sup>28</sup>Ibid., 631.

<sup>29</sup>M. J. Singer, "United States," in *Administrative Secrecy in Developed Countries*, ed. Donald C. Rowat (London: Macmillan, 1979), 310-311.

something from the rest of the public. Surveillance and security infrastructure served to actively construct categories of identity, imposed by the state, rather than citizen interest defining identity.<sup>30</sup>

The degradation in public trust in government, snowballing in the last several decades, also contributes to the perception that the public supposed to know no longer exists, or never existed in the first place, while the public supposed to believe no longer believes.<sup>31</sup> This is fed by the growing cultural resonance of narratives that the government is the greatest threat to the individual.<sup>32</sup> This type of radical hewing to equality as an ideal, without considering the implications for when everyone knows nothing and no one knows everything, appears to reflect in modern American society and the concentration on access, inclusion, and exclusion.<sup>33</sup>

In this sense, secrecy breeds suspicion and reaffirms belief in conspiracy by those in power to deny information—that vital piece of information—from the rest of the public in order to maintain its ill-gotten power, and can "weaken legal compliance, social trust, civic participation, and capacity for collective action."<sup>34</sup> Collective civic action is weakened even during a hallmark process of democracy, as surveillance and security increase around elections and establishes an insider/outside dichotomy.<sup>35</sup>

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<sup>30</sup>Julie E. Cohen, "Privacy, Visibility, Transparency, and Exposure," *The University of Chicago Law Review* 75, no. 1 (Winter 2008): 181-201.

<sup>31</sup>Shaun Bowler and Jeffrey A. Karp, "Politicians, Scandals, and Trust in Government," *Political Behavior* 26, no. 3 (September 2004): 273-4.

<sup>32</sup>Cohen, "The Inverse Relationship between Secrecy and Privacy."

<sup>33</sup>Dean, "Publicity's Secret," 647.

<sup>34</sup>David E. Pozen, "Deep Secrecy," *Stanford Law review* 62 (January 2010): 278.

<sup>35</sup>Bajc.



Conspiracy politics and negative information actions are perceived to subvert the rule of law and constitutional checks and balances.<sup>36</sup> The conspiracy does not need to exist for this to occur, but only the supposition of a secret, according to Derrida, is important, rather than "its actual existence or its content."<sup>37</sup> Information asymmetries and the potential for secrecy thus challenge the American ideal of equality in a fundamental way, more so as information and technology are democratized across society and into groups traditionally part of the public supposed to believe.

### Liberal Democracy and Popular Sovereignty

Modern democratic theory identifies six conditions necessary for large-scale democracy: elected officials; free, fair, and frequent elections; freedom of expression; alternative sources of information; associational autonomy; and inclusive citizenship.<sup>38</sup> Most of these rely on open access to information, and the elimination of imposed boundaries and categories of identity. Secrecy both challenges and supports these conditions.

In 1787, however, the Framers envisioned three specific requirements for a fledgling American democracy: free elections, the separation of powers, and a government limited by Constitutional guarantees.<sup>39</sup> The Constitution and subsequent Amendments were intended to support and reinforce these rights, and expanded into the conditions generally accepted by

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<sup>36</sup>Mark Fenster, *Conspiracy Theories: Secrecy and Power in American Culture* (Minneapolis, MN: University of Minnesota Press, 2008), 118-154, discusses the increasing emphasis on uncovering plots and conspiracies as a good and obligation. Hinson 2010 discusses the impact on "enlightened citizen understanding of governance" through negative information actions (surveillance in particular).

<sup>37</sup>Horn, 109.

<sup>38</sup>Robert Dahl, "What Political Institutions does Large-Scale Democracy Require?" *Political Science Quarterly* 120, no. 2 (Summer 2005): 187-197.

<sup>39</sup>Demetrios James Caraley, "Complications of American Democracy: Elections are not Enough," *Political Science Quarterly* 120, no. 3 (Fall 2005): 379-405.

modern democratic theory. Mechanisms for oversight of democratic systems hinge on the free flow of information, as elections, public opinion, and public deliberation all rely on, and form, narratives and discourse of the public sphere that defines legitimacy of governance.<sup>40</sup>

The Framers structured the government to prevent the tyranny of either the silent majority or an influential minority to the detriment of the other, even as access to education and information established boundaries within the American polity.<sup>41</sup> Modern politicians have recourse to both arguments -- whether acting in service of the silent majority or to protect minority rights—and can balance almost any popular demand for government reform through recourse to one or both arguments. Secrecy reinforces the ability to claim one is protecting the rights of an unknown minority, or seeking to represent the silent majority. This has created a government that is resistant to change, perhaps with an elective tyranny of the majority, and unlikely to submit easily to intermittent episodes of creedal passion.<sup>42</sup>

Democracy only works well, based on both the Framers and modern democratic theory, if citizens participate in governance and do so based on accurate, timely information. This belief underlies the assumed 'right to know'—not only does the public have a right to know what the government is doing, it has a right to know how and why the government came to the decisions it made.<sup>43</sup> Though the initial concept of the right to know was tied by the Founders to the financial transparency of taxes, the allocation of natural resources, and the education of the public, the right

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<sup>40</sup>Rahul Sagar, “On Combating the Abuse of State Secrecy,” *The Journal of Political Philosophy* 15, no. 4 (2007): 404-427.

<sup>41</sup>Joshua Miller, “The Ghostly Body Politic: The Federalist Papers and Popular Sovereignty,” *Political Theory* 16, no. 1 (February 1988): 99-119.

<sup>42</sup>Caraley.

<sup>43</sup>Peter Dennis Bathong and Wilson Carey McWilliams, “Political Theory and the People’s Right to Know,” in *Government Secrecy in Democracies*, ed. Itzhak Galnoor (New York: Harper Colophon Books, 1977), 3-21. See also Robertson, 11-21.

to know has expanded to include virtually all aspects of government information.<sup>44</sup> The confluence of government accountability and secret information creates a dilemma in governance: some policies would not function as effectively if made public, or could cease to function at all.<sup>45</sup>

Popular sovereignty is also affected by this information gap and a sense of conspiracy, in that popular sovereignty is only meaningful if the people give informed consent. If the people are uninformed, their ability to consent to the policies and actions of their government is infringed upon and calls into question the legality and legitimacy of that government. Pozen argues that "with secrecy activities, there can never be fully informed consent, because if the activities were publically announced ahead of time, there would no longer be any secret to protect."<sup>46</sup> Thus some aspects of government activity are always beyond the meaningful explicit consent of the governed, although implied consent exists for areas of national defense. Because democracies notionally choose to allow government to keep secrets, the institutions of state secrecy can be compatible with democracy.<sup>47</sup> The lack of action by the people to challenge the government commits the citizenry to obedience, according to Hamilton, and the government is empowered in their name until such a time as the citizens act to change it.<sup>48</sup> Both the lack of action by the citizenry and the democratic compatibility of secrecy rely on the notion that government is not engaged in activities abhorrent to liberal democratic values.

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<sup>44</sup>Kiyul Uhm, "The Founders and the Revolutionary Underpinning of the Concept of the Right to Know," *Journalism and Mass Communication Quarterly* 85, no. 2 (Summer 2008): 393-416.

<sup>45</sup>Dennis F. Thompson, "Democratic Secrecy," *Political Science Quarterly* 114, no. 2 (Summer 1999): 181-193.

<sup>46</sup>Pozen, 287.

<sup>47</sup>Sagar, "On Combating the Abuse of State Secrecy."

<sup>48</sup>Miller, "The Ghostly Body Politic: The Federalist Papers and Popular Sovereignty," 115.

Liberal democracy and popular sovereignty both rely on the well-informed citizen. According to James Madison “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”<sup>49</sup>

Madison referred not to the availability of information but to the necessity of public education to create informed, "enlightened" voters. Without education, the public is unable to comprehend and utilize the information that is available. Education forms one half of the 'right to know,' while information composes the other.

Accurate and timely information, then, is a precondition for meaningful democracy, as embodied in the people's 'right to know.'<sup>50</sup> Problems arise, however, when that which is perceived to be secret "contains the information necessary for debate and, hence, legitimacy . . . to withhold this information is to threaten democracy . . . any hint of secrecy endangers democracy."<sup>51</sup>

Standing in direct challenge to the necessity of secrecy are the ideals of transparency and publicity. Modern society, particularly in America, has conceived of disclosure as both a good and a process valued independently of the information being disclosed.<sup>52</sup> The act of disclosure is supposed to serve a purpose in the balancing of publicity, privacy, and secrecy; however disclosure has instead reached the level of pathology in American "infotainment" society.<sup>53</sup>

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<sup>49</sup>David M. O'Brien, "The First Amendment and the Public's 'Right to Know,'" *Hastings Constitutional Law Quarterly* 7 (Spring 1980): 587.

<sup>50</sup>Uhm, 6.

<sup>51</sup>Jodi Dean, "Secrecy since September 11," *Interventions* 6, no. 3 (2004): 369-370.

<sup>52</sup>Robertson.

<sup>53</sup>Bob Cunningham, "Pluralist Democracy: Balancing Publicity, Privacy, and Secrecy," *Administrative Theory and Praxis* 25, no. 2 (June 2003): 299-308.

Popular sovereignty is believed to rely on and be enhanced by "practices that enable the production and dissemination of public opinion," and privileges publicity not only as an ideal of liberal democracy but the "golden ring" of a society based on infotainment and revelation.<sup>54</sup> Publicity thus serves a purpose in modern American society, particularly with the popularity of 'reality television' and entertainment predicated on the revelation of personal information and private relationships. Rather than viewing information as legitimated by its publication by authoritative entities, the world instead exists in "an age of proliferating disclosures of knowledge legitimated precisely in terms of their discursive constitution as secrets. [emphasis in original]"<sup>55</sup> Information gains value in being first secret, then revealed.

Publicity is also seen as a salve for democracy, as the threat of revelation by the press or insiders can be seen as the only meaningful "defense against government abuse."<sup>56</sup> Efforts to move research on state crimes against democracy into the realm of criminal justice, rather than simply political theory, indicate a desire to rationally evaluate the misuses of democratic institutions within the American system.<sup>57</sup> Particularly troubling is a prevailing belief in a significant increase in state crimes against democracy in the U.S. after September 11 and the instantiation of the USA PATRIOT ACT, which created a politics of everyday fear and greatly expanded the mechanisms of domestic surveillance.<sup>58</sup>

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<sup>54</sup>Dean, "Publicity's Secret," 624.

<sup>55</sup>Jeremy Gilbert, "Public Secrets: 'Being-with' in an Era of Perpetual Disclosure," *Cultural Studies* 21, no. 1 (January 2007): 24.

<sup>56</sup>Louis Henkin, "The Right to Know and the Duty to Withhold: the Case of the Pentagon Papers," *University of Pennsylvania Law Review* 120, no. 2 (December 1971): 279.

<sup>57</sup>Lance deHaven-Smith, "Beyond Conspiracy Theory: Patterns of high Crime in American Government," *American Behavioral Scientist* 53, no. 6 (February 2010): 795-825.

<sup>58</sup>Kym Thorne and Alexander Kouzmin, "The USA PATRIOT Acts (et al.): Convergent Legislation and Oligarchic Isomorphism in the 'Politics of Fear' and State Crime(S) Against Democracy (SCADs)," *American Behavioral Scientist* 53, no. 6 (2010): 885-920.

That an increasing minority of the American public believes the government is engaged in systematic and persistent crimes against the democratic process should be disturbing to all citizens. This belief is reinforced, unfortunately, by the social value of conspiracy and a perception that the government, and particularly the executive bureaucracies, tend to utilize secrecy as a hedge against judicial and legislative oversight, and to "avoid embarrassment, to handicap political enemies, and to prevent criminal investigations of administrative action."<sup>59</sup>

Efforts to limit government secrecy, in the interest of guaranteeing the provision of relevant information to the public, include a variety of mechanisms. Moderating the temporal aspect of secrecy, or how long information is functionally kept concealed, or the degree of transparency, or how thickly the veil of secrecy is constructed, are both methods of limiting government secrecy.<sup>60</sup> Another suggestion is the limitation of executive classification, by Congressional mandate, to five categories of information: future military operations and plans; characteristics of weapons systems and platforms; secret technology and their research and development; intelligence operations, sources, and methods, and cryptography; ongoing diplomatic negotiations and foreign relations.<sup>61</sup> In theory, limiting concealed information to these categories would contribute to the preservation of the state without greatly hindering the public's calculation of informed consent, particularly when combined with temporal and transparency secrecy moderation. In practice, however, this raises the question of how those categories can be limited; though it may appear straightforward to classify and protect the development of a

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<sup>59</sup>William G. Weaver and Robert M. Pallitto, "State Secrets and Executive Power," *Political Science Quarterly* 120, no. 1 (Spring 2005): 90. Weaver and Pallitto refer specifically to the state secrets privilege, however the executive privilege is often accused of serving the same purpose for an executive branch seeking to protect military and intelligence programs.

<sup>60</sup>Thompson.

<sup>61</sup>"Plugging the Leak: The case for a Legislative Resolution of the Conflict between the Demands of Secrecy and the Need for an Open Government," *Virginia Law Review* 71, no. 5 (June 1985): 801-868.

cutting-edge weapons system, this may also require the classification of chemicals, bases, military units, workers, and even diseases.<sup>62</sup> The expansion of regimes of secrecy is difficult to foresee and contain, creating a ripple of concealment through information and government well beyond the original secret. The degree to which citizens understand the output of the political process has implications for the perceived and real legitimacy of the political system; legitimacy depends not on the fairness of initial processes, such as elections, but on the quality of government.<sup>63</sup> If citizens cannot intelligently evaluate openly-acknowledged government policies, there is little justification for the legitimacy of secret processes, the missing piece of the puzzle.

Beyond relatively straightforward government efforts to conceal, the processes of the media can contribute to the opacity of information. Modern media strategies can prevent the public from effectively processing information, reinforced by government mechanisms for limiting information on policies and procedures.<sup>64</sup> The glut of information creates a great deal of noise through which a citizen must search for the relevant signal. Infotainment blurs the lines between news and fiction, reality and the 'reality' of television.

The current environment of an information economy and society of spectacle creates and reinforces the idea that citizens only have access to an incomplete picture of reality, that there is vital information missing. If they only had access to that piece of information, which someone is deliberately concealing, then it would be possible to make better, faster, more accurate decisions about elections and policies in their government. In the absence of that information, the system is undemocratic at best, and tyrannical at worst. Whether this is the case or not, the perception of

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<sup>62</sup>Trevor Paglen, "Goatsucker: Toward a Spatial Theory of State Secrecy," *Environment and Planning D: Society and Space* 28 (2010): 759-771.

<sup>63</sup>Bo Rothstein, "Creating Political Legitimacy: Electoral Democracy versus Quality of Government," *American Behavioral Scientist* 53, no. 3 (November 2009): 311-330.

<sup>64</sup>Laurie A. Manwell, "In Denial of Democracy: Social Psychological Implications for Public Discourse on State Crimes against Democracy Post-9/11," *American Behavioral Scientist* 53, no. 6 (February 2010): 848-884.

hidden information and its utility to the people is important as it reinforces the sense of conspiracy that separates the public from the government and its institutions, exacerbating the separation between American institutions and ideals.

By "inhibiting input, oversight, and criticism within and outside government," secrecy can lead to lower-quality policies or the perception of group-think.<sup>65</sup> Pozen discusses a specific case in the Bush administration after September 11, where "secrecy within the administration both reflected and reinforced the concentration of power among a small group of ideologically-aligned officials," preventing the wide discussion of controversial and perhaps misguided political and military policies.<sup>66</sup> Thus concerns may be less about popular sovereignty and more about efficiency and effectiveness of governance, however disclosures fail to reinforce the transparency of the political process "but to reconfirm a mounting cynicism about the possibility of democracy."<sup>67</sup>

The sense of conspiracy allows groups within the U.S. public to nurture an idea that the government, through the use of secrecy, is no longer acting at the will of the people, as the people are unwilling to consent to the government's actions and thus the government is illegal and subject to overthrow. Without a meaningful conversation about the role of secrecy and an effort on all sides to increase understandings of secrecy, the sense that the U.S. system is ripe for challenge, whether armed or otherwise, will only continue to grow. The institutional difficulties of changing the system within the current structure, discussed earlier in the section, only increase the likelihood that challenges will be extreme when they eventually occur. The increase in anti-government and pro-militia movements seems to be a harbinger of the perception that American institutions have greatly departed from at least one interpretation of the Founding ideals.

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<sup>65</sup>Pozen, 278.

<sup>66</sup>Ibid., 336.

<sup>67</sup>Gilbert, 24.



## Liberty

Liberty, if understood as the ability to act freely in society absent restrictions from government and other official organs, is also challenged by secrecy. This is most notably in the press recently with the actions of the U.S. intelligence community and the possible violations of constitutional and civil rights of U.S. citizens through mass collection projects. The threat of programs as described in the media or even the popular perception of them, reinforces the popular concept that American liberty is under attack by the government created to protect it. Charges of an emerging garrison state, and even an alternate intelligence state, give credence to the popular charges that government, military, and intelligence secrecy are waging war against the average citizen's rights to life and the pursuit of happiness.

Post 9/11, security and the prevention of additional terrorist attacks were used as a catalyst for expanded regimes of surveillance and collection. The perception in society at the time, arguably, supported the trading of liberty for increased security. Secrecy served as a container for the markedly absent sense of security, as the secret could "protect or save us could it only be revealed."<sup>68</sup> Over time, however, and with indications of secrecy over-reach by a variety of American institutions, the consensus in American society became one of too much power in the security institutions and an over-reach into the violation of fundamental American civil and constitutional rights. Security, then, transcended the logic of individual rights,<sup>69</sup> and secrecy took the place of strategy in the absence of other guiding principles.<sup>70</sup> One could argue this gave rise to another episode of creedal passions, in Huntington's terms, in which the American public struggled to remake its institutions more in line with American ideals. Demands for the public's

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<sup>68</sup>Dean, "Secrecy since September 11," 368.

<sup>69</sup>Daniel Beland, "Insecurity, Citizenship, and Globalization: The Multiple Faces of State Protection," *Sociological Theory* 23, no. 1 (March 2005): 25-41.

<sup>70</sup>Bratich, "Public Secrecy and Immanent Security: A Strategic Analysis."

right to know also arose after 9/11, although demands for disclosure competed with a "variety of secretizations."<sup>71</sup> Whether this was successful, in light of the conflicts in Iraq and Afghanistan and continuing debates over Freedom of Information Act and Foreign Intelligence Surveillance Act court decisions, remains to be seen.

Part of liberty is also the privacy for an individual to pursue their vision of happiness without the infringement of the Leviathan. Thus secrecy can be used to protect privacy and enable the individualism so cherished in American values.<sup>72</sup> In comparison, concepts of total transparency create a world where privacy no longer exists and exposes the individual to the prying eyes of a totalitarian nightmare in which nothing is private and everything is known.<sup>73</sup> Privacy is not only an individual right, however, and should apply to collective action and the public as an entity.<sup>74</sup> Despite the logical conclusion of total transparency as a negative condition, many modern transparency-in-government movements are "marked by an almost paranoid belief in the ubiquity of secret political machinations and crimes; . . . [and believe] the only remedy is a political culture of total transparency."<sup>75</sup>

Similarly to this, information discourse of all types, not only governmental, "is extraordinarily resistant to recognizing that the 'openness' practiced . . . both online and off, is a

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<sup>71</sup>Dean, "Secrecy since September 11," 367.

<sup>72</sup>Pozen, 277. See also Horn, 112.

<sup>73</sup>Bok, 18-24.

<sup>74</sup>Daniel J. Solove, *Nothing to Hide: The False Tradeoff between Privacy and Security* (New Haven CT: Yale University Press, 2011), 47-54. See also Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* (New York: Vintage Books, 2001), 159-195, for a discussion of degrees of individual and collective privacy in cyberspace. Of particular note is the observation that privacy and transparency in online interactions is a matter of degree, rather than total privacy or total transparency. Individuals make choices regarding the degree to which they will expose private information, dependent on the circumstances of the interaction and the forum in which it occurs.

<sup>75</sup>Horn, 119.

matter of degree."<sup>76</sup> It should be no surprise that government transparency, like individual openness on the Internet, is also a matter of degree. The overall "devaluation of privacy is bound up with our political economy" and the discourse about information in general and is driven not only by government policy but by larger social and cultural forces at work.<sup>77</sup> Publicity should establish legitimacy in government; however the use of secrecy creates instead a "logic of suspicion" that undermines that legitimacy.<sup>78</sup>

Though discussions of these ideals constitute their own projects, it is clear that the presence of secrecy in government poses a challenge to each of these ideals in a meaningful way. Government actions without secrecy can challenge these ideals, certainly, as even policies conducted without a hint of concealment can violate the tenets of liberty, equality, democracy, and popular sovereignty, however the perception of secrecy greatly complicates, or entirely eradicates, the ability of society and government to have a meaningful dialogue over those policies. The debate over marriage equality leads to dialogue regarding equality and liberty, among other central ideas. The people in a variety of states were able to voice their (informed as well as uninformed) opinions on this matter, politicians responded, and the wheels of democracy turned to reflect, in some manner, both the will of the people and the spirit of the constitution as examined by the Supreme Court. The absence of concealment of the programs and laws that challenged marriage equality enabled public discourse to check the power of government to infringe on the liberty of the citizenry.

The one-sided debate about a variety of military and intelligence policies, to include unlawful combatants and extraordinary rendition, has led to a burgeoning sense of even deeper violations of constitutional and international law in the name of security, due to the absence of

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<sup>76</sup>Cohen, "The Inverse Relationship between Secrecy and Privacy," 888.

<sup>77</sup>Ibid., 884.

<sup>78</sup>Dean, "Secrecy since September 11," 366.

open dialogue and debate. Though there is a legitimate possibility that the price of that debate is too high in terms of security and intelligence, the delay in acknowledgement by the government and the effect of leaked information create the conditions in which spectacle and conspiracy have blossomed. Even should the government release information related to these programs, or other classified programs, there will always linger the suspicion that the 'whole story' has not been revealed, that information is incomplete or otherwise doctored, or that what is revealed in fact conceals a greater conspiracy or evil.

The gap this creates between the perception of American ideals and the reality of government institutions poses two specific challenges to American democracy: first, it eliminates the justification for arcenum without explicitly discussing the threat posed by using only the logic of secretum. State survival hinges on the state's ability to defend its sovereign territory, usually through military capacity as well as diplomacy, legitimizing the hidden container of arcenum imperii in the name of security and defense. The emphasis on equality, liberty, popular sovereignty, democracy, and transparency as a value implicit in these ideals, has evolved to the detriment of a rational discourse on the legitimate uses of government secrecy. In other words, the popular belief that transparency is the only solution for government excesses has eradicated the possibility for discussion of the utility and necessity of the arcana, setting conditions for the widespread belief that the government lacks legitimacy based on its efforts to conceal information under the rubric of security.

The second challenge posed by the gap between American ideals and the utility of secrecy is the creation and maintenance of an impossible fiction: an either/or proposition whereby the government is either open or not, transparent or not, conspiring or not. Rather than considering a new theory of secrecy and evaluating the ideals of the Framers in light of changing social, technological, and international pressures, modern creedal passions appear to push for the

return to a 'simpler time' through the modification and perhaps destruction of the institutions formed by uniquely American historical and structural processes.

### AMERICAN INSTITUTIONS

Though Huntington does not specifically illustrate which institutions are least—or most—representative of American ideals, it is worth considering the system of American institutions along a continuum of secrecy. Deeper secrecy is preferred by the executive, for purposes of security and protecting internal processes as well as bureaucratic survival, and to some extent by the legislative branch as well. Further along the continuum and favoring shallower secrecy, with some elements advocating for total transparency, are both the media and the people themselves. When these institutions are in near-equilibrium, they exert equal and balancing pressures on each other,<sup>79</sup> so that the people can be swayed by arguments from the media or from branches of government, and an emerging security issue can drag the other elements toward deeper secrecy with potential threats to the survival of the state. Though these institutions have not existed easily with each other consistently, the system has been able to readjust and realign itself during the periods of creedal passion.<sup>80</sup>

The current episode of discord, however, presents challenges to the eventual realignment of the system and the return to homeostasis. Huntington's original four predictions encompass the possible ways in which the system could resolve some of the internal contradictions and attempt to bring American institutions more into line with American ideals. External factors, to include the challenges examined in the preceding section, and internal contradictions have complicated the ability of the system to realign itself absent a significant structural change in the environment or the assemblage.

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<sup>79</sup>Michael W. Spicer, *The Founders, the Constitution, and Public Administration: A Conflict in World Views* (Washington, DC: Georgetown University Press, 1995), 41-53.

<sup>80</sup>Huntington, “American Ideals versus American Institutions.”

Deep secrecy in a condition in which "outside parties are unaware of a secret's existence; they are in the dark about the fact that they are being kept in the dark," while shallow secrecy indicates that some "outside parties are aware that a secret exists even though they are ignorant of its content."<sup>81</sup> The important factor is less the content of the information but how many people and what type of people know of the secret.<sup>82</sup> The symbiotic relationship between transparency and secrecy is often overlooked, or presented instead as a dichotomy instead of a continuum, which reinforces the moral discourse that rewards transparency and condemns secrecy.<sup>83</sup>

The executive branch in the last several decades has trended toward deeper secrecy, more so in the years since 9/11, as executive privilege and the security bureaucracy expanded with the Long War. This tendency is countered, to some degree, by the prevalence of leaks and unofficial disclosures of sensitive information from the executive branch. The persistent acts of disclosure, so popular due to the information economy in Washington and the society of spectacle in the general public, prevents a meaningful dialogue even as it reinforces a culture of conspiracy.<sup>84</sup>

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<sup>81</sup>Pozen, 260.

<sup>82</sup>Luise White, "Telling More: Lies, Secrets, and History," *History and Theory* 39 (December 2000): 13. "Whether a rumor or gossip is true or false isn't what is important about it. What is important about rumors is that they come and go with great intensity, and that people often act on the rumors even if they themselves don't fully believe in them." Government leaks often act as both gossip and rumor, in this sense, where the veracity of the information is less important than the potential scandal generated by the transmission of the information. The media and public may very well act on rumor of government transgressions, believing that secrecy conceals the evidence, without waiting for confirmation or denial.

<sup>83</sup>Birchall.

<sup>84</sup>Itzhak Galnoor, "Government Secrecy: Exchanges, Intermediaries, and Middlemen," *Public Administration Review* (January/February 1975): 32-42, discusses the use of information as a commodity in both the political and administrative marketplace.

Demands for disclosure are inherently suspicious demands and indicate a loss of credibility and legitimacy.<sup>85</sup>

The legislative branch, though cooperating in some elements of government secrecy while attempting to mitigate the power of the executive, courts both the executive and the traditional media through the information economy. The public, enchanted by reality television and a culture of confession and conspiracy, advocates for increased transparency or at least a move toward the shallowest of secrecies. The military realm of secrecy may be one of the few areas where the public is willing to tolerate secrecy, if it means the defense of the country and the protection of America's military personnel. Tolerance for intelligence programs and the blending of intelligence and military operations appears to be far lower, however, as these pose internal threats to American rights, values, and ideals.

The media appears to have bifurcated—on one hand, the traditional media continues as a profession, with the self-policing and ethics of professionalization which challenges government secrecy while at the same time attempting to respect legitimate security concerns through negotiation or publication delay.<sup>86</sup> On the other hand, the proliferation of the 'new media,' to include social media, reinforces the perception that all information is searchable and knowable. This new media creates an information glut in which the signal can rarely be discerned from the noise. The secret then functions as a means to credibility, in that it could provide the key through which all the other information that is obtained becomes authoritative.<sup>87</sup>

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<sup>85</sup>Dean, "Secrecy since September 11," 369. See also deHaven-Smith 2010 for discussion of state crimes against democracy and calls for revelation and confession from the government in order to assuage suspicions about legitimacy and credibility.

<sup>86</sup>Hannah Arendt, "Lying In Politics: Reflections on the Pentagon Papers," *The New York Review of Books*, November 18, 1971, <http://www.nybooks.com/articles/archives/1971/nov/18/lying-in-politics-reflections-on-the-pentagon-pape/> (accessed 19 December 2013).

<sup>87</sup>Dean, "Secrecy since September 11," 370.

There are no professional obligations or responsibilities to restrain the new media, so that the only valued commodity is something no one else knows. Information is a valuable commodity in any relationship.<sup>88</sup> The result is an emerging contradiction within the Fifth Estate: the traditional media verging toward the interests of moderate secrecy and the existing government institutions based on professional obligations and responsibilities; and the verging of new media into the people and the perception of all-knowing, always-available information in a culture of confession and conspiracy. These competing forces destabilize the traditional competitive homeostasis within the system and poses significant challenges for balancing the competing need for "the government's 'need' to conceal, Press's 'need' to publish, the people's 'need' to know."<sup>89</sup>

### The Executive

Huntington poses an interesting observation regarding the reflection of American ideals into foreign policy. Because of the centrality of American ideals to all aspects of governance, the U.S. finds itself in the position of pursuing foreign policy based not solely on national strategic interests but on those ideals of equality, liberty, democracy, and popular sovereignty.<sup>90</sup> Though power in international relations is amplified by secrecy, which creates both information and action advantages for states utilizing secrecy effectively,<sup>91</sup> the executive, as the executor of diplomacy and foreign policy as well as military action, bears the responsibility for implementing policies that are not only beneficial for the U.S. but which are uniquely "American" in the letter and spirit of the agreement. Thus the military can find itself embroiled in what might be considered an "un-American war," based on the presence or absence of American ideals in the

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<sup>88</sup>Fine and Holyfield.

<sup>89</sup>Henkin, 278-9.

<sup>90</sup>Huntington, "American Ideals versus American Institutions."

<sup>91</sup>Michael Warner, "Fragile and Provocative: Notes on Secrecy and Intelligence," *Intelligence and National Security* 27, no. 2 (April 2012): 223-240.



initiation or prosecution of a conflict. The perceived gap between the policy and the ideals can greatly influence the relationship between the military and the people, as during the Vietnam War, or the people's faith in the government and the legitimacy of public administration, as in the post-Iraq War discussion.<sup>92</sup>

In addition to the inherent gap between a real strategic interest and America's ideals, secrecy complicates the relationship between the executive branch, the rest of government, the media, and the people. Much of the debate about secrecy and the executive centers around executive privilege and the classification system of the bureaucracies in the defense and intelligence communities, with the states secret privilege (an attempt to protect the arcanum from prying eyes) occasionally being aired as an executive over-step.<sup>93</sup> Executive privilege has a long history in the U.S., from the first presidency to the present, concealing executive deliberations, diplomatic negotiations, and intelligence sources and methods from Congress.<sup>94</sup>

Thus while not technically antithetical to the values of the Founding Fathers, executive privilege challenges the openness of democracy while facilitating the balance of powers essential to maintaining the American system. With prevailing trends in modern society, however, and the aftermath of the 9/11 terrorist attacks, executive secrecy may have pulled too far outside of the traditional balance of powers when considering the legislative move toward shallow secrecy. In the realm of foreign policy and military action, there is often a tradeoff between operational

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<sup>92</sup>Spicer, 2-7.

<sup>93</sup>Weaver and Pallitto, 92. "Executive privilege is a qualified privilege, state secrets is an absolute privilege . . . arising from the raw fact that countries have a responsibility to prevent becoming instruments of their own destruction." The state secrets privilege prevents the disclosure of information in court proceedings if that information poses a reasonable danger to national security.

<sup>94</sup>Schwartz 1977; Hoffman, 178-219; Rozell 1994 for a history of executive privilege and the relationship between executive privilege and democratic accountability. Rozell elaborates on the legal basis for executive secrecy while making information available for democratic accountability.

efficiency and democratic legitimacy.<sup>95</sup> As Weaver and Pallitto argue, "it is unreasonable and constitutionally unsound to rely on presidents and administrators to report their own misconduct," particularly in an environment of increasingly partisan politics.<sup>96</sup>

Executive privilege and administrative secrecy serve not only to conceal information from the general public but also from the other branches of government.<sup>97</sup> Though debate constitutes a public and the politics of a society, Dean discusses a preference for secrecy in the Bush administration that sought instead to eradicate debate and build only consensus through an emphasis on patriotic unity.<sup>98</sup> The preference for secrecy and the increase in mechanisms of surveillance raised secrecy to the level of pathology for some government institutions, both during the Cold War and following 9/11;<sup>99</sup> though creedal passion in the 1970s attempted to address this pathology, the tension between security and transparency may prevent further efforts at reform in the current system. Formal mechanisms of oversight can only work to the extent that the secret-keepers allow them to work: when "the keepers are determined to keep their secrets deep, no matter the cost, there is not much the outsider can do."<sup>100</sup> Secrecy as a bureaucratic regime operates under predictable patterns of self-perpetuation, and thus is unlikely to respond to

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<sup>95</sup>Hans Born and Loch K. Johnson, "Balancing Operational Efficiency and Democratic Legitimacy," in *Who's Watching the Spies?: Establishing Intelligence Service Accountability*, ed. Hans Born, Loch K. Johnson, and Ian Leigh (Dulles VA: Potomac Books, 2005), 225-240.

<sup>96</sup>Weaver and Pallitto, 108.

<sup>97</sup>Horn, 116. See also Rourke 1975, for a discussion of administrative secrecy.

<sup>98</sup>Dean, "Secrecy since September 11," 369.

<sup>99</sup>Carl J. Friedrich, *The Pathology of Politics* (New York: Harper and Row, 1972), 175-191.

<sup>100</sup>Pozen, 336.

"episodic indignation" from the public or the rest of government, requiring instead a more concerted effort at reform.<sup>101</sup>

Internal mechanisms to verify legal compliance of programs may hedge the opportunities for abuse of government secrecy, however unless the bureaucracy utilizes a sufficiently diverse set of views, there may be few naysayers allowed access to the secrets. The very existence of secrecy creates boundaries and bureaucratic gatekeepers, by their nature concerned with the ability to exclude challengers from the inner sanctum.<sup>102</sup> Even executive leaks are insufficient to dismantle the security apparatus, serving more of a political purpose than a revelatory function.<sup>103</sup>

Public debate over leaks, whistle-blowing, and unauthorized disclosure is colored by ideology and the public perception of overwhelming government conspiracy. The outcry in the aftermath of Edward Snowden's adventurism serves two functions: first, to legitimate the spectacle of Snowden's notionally patriotic actions as the ultimate in revelation; and second to confirm the prevailing suspicion of concealment by government. Whistle-blowing should serve to enhance the "democratic credibility of policies," yet the Snowden example only exacerbates the sense that only a major restructuring of the American security system will guarantee the survival of American ideals in light of a fundamentally too-powerful executive branch.<sup>104</sup> Rather than leading to a national conversation on the threats facing the U.S. after a decade into the Long War, most debates focus on civil rights, constitutional obligations, and scapegoating of current or previous administrations, depending on one's political bent. Political theater over the alleged and

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<sup>101</sup>Daniel Patrick Moynihan, "Secrecy as Government Regulation," *Political Science and Politics* 30, no. 2 (June 1997): 165.

<sup>102</sup>Galnoor, "Government Secrecy: Exchanges, Intermediaries, and Middlemen," 32-42.

<sup>103</sup>David Wise, *The Politics of Lying: Government Deception, Secrecy, and Power* (New York: Random House, 1973), 126-143.

<sup>104</sup>Pozen, 334.

real abuses of classified programs takes the place of real dialogue and resolution of pending issues, and instead exacerbates the growing divide between the public and the government.

Another consequence of the executive classification system presents an interesting dimension of secrecy: the generation of secrets and the spatiality of those secrets. Spatial aspects of secrecy are tied most notably the nuclear program and highly classified military technology programs.<sup>105</sup> Under the law as it currently exists, information related to nuclear and even atomic weapons is "born secret"—it is classified before it is even tested or implemented. This presents a challenge for scientific advancement and development, but also for secrecy—after all, nuclear weapons arose from the manipulation of nature, such that the factual nature of nuclear reactions were available to any scientist with the intellect and laboratory capacity to observe them. The persistence of classification for information which now exists in the public domain poses an interesting conflict for secrecy advocates as well as transparency advocates; of all the information most usefully kept out of the hands of the average individual, nuclear weapons technology and research should be at the top of the list.<sup>106</sup> And yet the government's insistence that even outdated material should remain classified reveals the absurdity of some efforts to conceal information and opens the government to legitimate critiques from transparency advocates.

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<sup>105</sup>Bok, 153-170, discusses the role of secrecy in scientific research, absent direct government intervention. Galison 2010, reviews the history of espionage and secrecy laws in the U.S., with particular attention to the role of the Atomic Energy Act: AEA does not differentiate between applied and conceptual science, does not predicate legal punishment on the status of the secret-keeper (thus nuclear secrets become "autonomous" and independent of personnel and systems), goes into any spaces where the secret work might occur (not only military and government installations, as with the espionage statutes, and most importantly, allows the government to mete out severe punishment for transgressions even during peacetime.

<sup>106</sup>Jacob N. Shapiro and David A. Siegel, "Is this Paper Dangerous? Balancing Secrecy and Openness in Counter-Terrorism," *Security Studies* 19 (2010): 66-98, comments on the tradeoffs for policymakers make in deciding on openness and publicity while attempting to protect society from terrorism and other security threats.

### The Legislative

As the purse-holder and agent of oversight for executive and military programs, the legislative branch both participates in and challenges government secrecy. The "leave it to the legislature" attitude toward oversight of military and intelligence programs poses a significant problem for internal compliance for a variety of reasons.<sup>107</sup> First and foremost, the Congress is a political institution, not a bureaucratic one, and thus is not truly capable of comprehensive oversight.<sup>108</sup> To provide meaningful oversight, the Congress must desire knowledge of what the executive attempts. The lack of interest in executive programs may signify that individual members of Congress do not want the responsibility of knowledge, as silence on the matter means culpability in the programs should they be challenged by the public in the future, or condemnation of the program could require that the member of Congress offer an alternative view or may be proven wrong should the program yield positive results. Oversight by political institutions tends to be conducted with a view toward potential political advantage, although a knowledge gap in Congress may also indicate executive efforts at obfuscation of programs concealed in deep secrecy.<sup>109</sup>

The Congressional right to know is implied in the Constitution, and the Senate itself is the only institution explicitly given the right to conceal in the Constitution.<sup>110</sup> The military and security sector are obligated to report programs to Congress by law, particularly through the budget process and the oversight of several Congressional Committees. Though Congressional

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<sup>107</sup>Solove, 164-173.

<sup>108</sup>James M. Lindsay, "Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom," *Armed Forces and Society* 17, no. 1 (Fall 1990): 7-33.

<sup>109</sup>Peter Gill, "The Politicization of Intelligence: Lessons from the Invasion of Iraq," 2005, offers an example of the politicization of intelligence around the 2003 invasion of Iraq by the executive and legislature.

<sup>110</sup>Uhm.

staffers may undergo something akin to an executive branch security clearance, elected members of Congress do not hold security clearances and are considered sufficiently investigated by the process of election and the will of the people. This can lead to some consternation when members of Congress may not value the secrecy of information to the extent members of the executive bureaucracy may desire, amplifying the conflict between bureaucratic and political interests. The competing pressures and incentives between policymakers and the defense establishment illustrate the difficulty of conducting objective oversight.<sup>111</sup>

An element of distrust between the executive and legislative branches is exacerbated not only by the incursion of executive power into what Congress views as traditionally legislative, but by the professionalization of politics and the increasingly partisan nature of government.<sup>112</sup> Even when Congress counted Framers among its members, party conflict complicated democratic debate,<sup>113</sup> however the modern era shows markedly diminished civility between elected officials.<sup>114</sup> Professional politicians rely on the support of constituencies and thus must denigrate the policies of other members of government not associated with their party, support the policies of members of their party, and challenge government programs and policies that may be detrimental for their constituencies while defending programs that provide benefits to their

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<sup>111</sup>Robert Jervis, "Why Intelligence and Policymakers Clash," *Political Science Quarterly* 125, no. 2 (Summer 2010): 185-204.

<sup>112</sup>Barry M. Blechman, *The Politics of National Security: Congress and U.S. Defense Policy* (New York: Oxford University Press, 1990), 167-200, discusses the War Powers Act and the conflict between the Congress's right to declare war on behalf of the American people and both the necessity and ability of the executive to move decisively and quickly in the interests of the American people. To what extent democratic accountability is undermined by the War Powers Act and the apparent weakening of Congressional oversight remains under debate, particularly after Operations Iraqi Freedom and Enduring Freedom.

<sup>113</sup>Hoffman, 84-124.

<sup>114</sup>Caraley, 397, discusses partisanship and the degree to which opposing parties have become "enemies to be destroyed" rather than civil servants equally interested in the common good.

constituencies. Individual members of Congress deliberately distance themselves from the institution of Congress in order to highlight individual successes and emphasize institutional failures, further widening the gap between the obligations of the elected officials and the expectations of the people.<sup>115</sup> During recent election cycles, politicians tend to depict voting as a choice, rather than a right or civic duty, and in an overall negative manner, further deemphasizing the collective power of the public.<sup>116</sup>

In order to create and maintain political capital, members of Congress defend weapons platforms the Department of Defense does not want in order to direct jobs to their districts, maintain relationships with interest groups and lobbyists in the military-industrial complex, and shore up images of supporting the troops. Controlling the military budget and the overall management of defense resources gives Congress remarkable power for affecting security and the projection of American ideals abroad,<sup>117</sup> however the ability to conduct meaningful military reform requires a broad appeal to a coalition throughout Congress, which seems unlikely in the current environment of partisanship and fiscal uncertainty.<sup>118</sup>

In order for the public to know the benefits brought to them by 'their' politicians, those politicians must advertise and advocate the measures taken to support their constituencies. The crowd plays a vital role in the political campaign, engaging and influencing the political actor

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<sup>115</sup>Bowler and Karp, 273.

<sup>116</sup>Sharon E. Jarvis and Soo-Hye Han, "From an Honored Value to A Harmful Choice: How Presidential Candidates have Discussed Electoral Participation (1948-2012)," *American Behavioral Scientist* 57, no. 12 (2013): 1650-1662.

<sup>117</sup>Barry M. Blechman, *The Politics of National Security: Congress and U.S. Defense Policy* (New York: Oxford University Press, 1990), 23-62.

<sup>118</sup>Wiris (1991) discusses the Reagan-era military reform and the efforts in Congress to find broad support for those reforms. The same conditions are unlikely to be established in the current political climate.

though the consequences may be unintended by the public.<sup>119</sup> If something isn't "public(ized), it doesn't seem to exist as all."<sup>120</sup> This can occur to the detriment of the security sector, particularly as power in Washington is exemplified by being 'in the know' through access to secret and classified information. This information economy and "game of leaks" exists between the executive, legislature, and the media, as a constant trading of sensitive information for political favors fuels alliances and feuds in Washington.<sup>121</sup>

The U.S. Congress "is highly decentralized and individualized in the face of weak party discipline," leading to the public correlating individual behavior to the institution as a whole.<sup>122</sup> Citizens are unlikely to disaggregate the misbehavior of individual Congresspersons from the prestige and legitimacy of the institution of Congress, and thus as individual scandals play out, the end result is an overall depreciation in the public image of Congress as a legitimate and competent authority capable of checking the power of the executive bureaucracies. The decline in trust in government should be of great concern to every citizen of the U.S., particularly as that trust deficit relates to the people's representation in Congress.<sup>123</sup>

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<sup>119</sup>Robert E. Brown, "Conjuring Unity: The Politics of the Crowd and the Poetics of the Candidate," *American Behavioral Scientist* 54, no. 4 (December 2010): 382-393. The phenomenon of the crowd presents a unique aspect of the public's political engagement through mass dynamics. The presence of a crowd encourages political theater and spectacle, eliminating discourse in favor of partisan sound-bites and the regurgitation of ideologically acceptable truisms.

<sup>120</sup>Dean, "Publicity's Secret," 625.

<sup>121</sup>Sandra Davidson, "Leaks, Leakers, and Journalists: Adding Historical Context to the Age of Wikileaks," *Hastings Communications and Entertainment Law Journal* 34, no. 1 (Fall 2011): 27-92. See also Wise, 126-143 for a discussion specific to Executive Leaks; and 296-332 for a discussion of the government and press leaks.

<sup>122</sup>Bowler and Karp, 278.

<sup>123</sup>*Ibid.*, 272.



## The Public

Who, and what, is the American public? What it means to be a public, a polity, or a citizenry fills libraries of discourse, however three ideas are particularly relevant for the discussion of secrecy and American society. First is the role of structural and institutional factors in forming a "public" and "private" sphere, arguably as a result of the interactions of capitalism and liberal democratic ideology. While "public" is used generically, the "public" of each state, country, and society forms from sets of unique cultural, historical, structural, and institutional pressures.<sup>124</sup> Second is the creation of the political realm and "the public" through ideological antagonism and debate. It is only through contention and negotiation that politics can function—a public cannot exist in the modern sense without the agonism of political discourse.<sup>125</sup> Finally, secrecy played a pivotal role in the creation and survival of the public and private spheres in competition with the sovereign's absolute power. Without the ability to organize and communicate clandestinely, a private sector to enable the modern public would not have emerged.<sup>126</sup> What it means to be a people exists within these ideas and in collective identity.<sup>127</sup>

A crisis has emerged in the public sphere, however, in the depoliticization of the public sphere through a focus on the individual scandals of political actors<sup>128</sup> and the decreased efficacy of social capital in the relationship between social trust and norms of citizenship.<sup>129</sup> Though

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<sup>124</sup>Agnes S. Ku, "Revising the Notion of 'Public' in Habermas's Theory - Toward a Theory of Politics of Public Credibility," *Sociological Theory* 18, no. 2 (July 2000): 216-240.

<sup>125</sup>Arendt, "Lying In Politics: Reflections on the Pentagon Papers."

<sup>126</sup>Simmel.

<sup>127</sup>Giorgio Agamben, *Means without End: Notes on Politics*, trans. Vincenzo Biretti and Cesare Casarino (Minneapolis, MN: University of Minnesota Press, 2000), 29-36.

<sup>128</sup>Gilbert.

<sup>129</sup>Sonja Zmerli, "Social Capital and Norms of Citizenship: An Ambiguous Relationship?" *American Behavioral Scientist* 53, no. 5 (2010): 657-676.

technology enables the creation of political participatory spaces online, changing the meaning of civic engagement,<sup>130</sup> and a broader range of political activities available to citizens,<sup>131</sup> this may be a detrimental change to the American political process. A wider variety of potential activities does not indicate a depth of participation similar to previous collective action; signing online petitions, posting on social media, "tweeting" and texting, making campaign videos available online, and providing "iReports" to news media do not reflect the same effort and engagement as previous collective action activities demonstrate.

The modern American public behaves more as an audience than as actors engaged in collective action. Public organization and pursuit of political or other goals has given way to clicking 'like' on social media as acceptable activism, which provides the minimal interruption to life while still assuaging the public's perception that something must be done. Normative metrics for civic engagement, such as attending town hall meetings and participating in civic groups, are eroding as online advocacy, sharing, and remixing grow in popularity.<sup>132</sup> If the U.S. faces a new period of creedal passion, it does so with a public unable or unwilling to actively participate in the remaking of its government, demanding instead the immediate assuaging of its requirements with little to no effort. The immediacy of online politics further inflames and complicates the

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<sup>130</sup>Rita Kirk and Dan Schill, "A Digital Agora: Citizen Participation in the 2008 Presidential Debates," *American Behavioral Scientist* 55, no. 3 (2011): 325-347.

<sup>131</sup>Deana A. Rohlinger and Jordan Brown, "Democracy, Action, and the Internet after 9/11," *American Behavioral Scientist* 53, no. 1 (September 2009): 133-150.

<sup>132</sup>Paul Mihailidis and Benjamin Thevenin, "Media Literacy as a Core Competency for Engaged Citizenship in Participatory Democracy," *American Behavioral Scientist* 57, no. 11 (May 2013): 1611-1622. See also Robert D. Putnam, "Tuning In, Tuning Out: The Strange Disappearance of Social Capital in America," *PS: Political Science and Politics* 28, no. 4 (December 1995): 664-683.

polarization of the American public, in both issues and behavior, and could herald a public no longer willing to look past politics and partisanship to ensure the common good.<sup>133</sup>

Engaging in political life, in this sense, is far easier and less costly than in previous decades but also makes less of a meaningful difference. The predominance of the society of spectacle creates an audience of watchers rather than doers, content with canned soundtrack laughter that relieves them of the obligation to laugh.<sup>134</sup> The "reality" of reality television is what represents the modern American public, based on a fantasy that the audience shares a common reality and can be represented in a unitary fashion.<sup>135</sup> Infotainment provides an idealized presidential candidate through movies and television, feeding a superficial standard into the comparison by the audience of voters between a real candidate's speech and the ideal.<sup>136</sup>

Just as society is relieved of its obligation to act, "contemporary technoculture" advocates publicity as the solution to any emerging problem.<sup>137</sup> Publicity serves as a false sense of revelation and discourse in the political as well as social realms, and fuels the "intense commodification of knowledge," until "the experience of being among the first (to hear, to see, to

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<sup>133</sup>Karl Kaltenthaler and William J. Miller, "The Polarized American: Views on Humanity and the Sources of Hyper-Partisanship," *American Behavioral Scientist* 56, no. 2 (2012): 1718-1734; Mason 2013 discusses behavioral polarization versus issue position polarization, and the degree to which the American public generally agrees on most issues yet is growing increasingly "biased, active, and angry." Also Miller 2013, polarization, politics, and the common good.

<sup>134</sup>Dean, "Publicity's Secret."

<sup>135</sup>Dean, "Secrecy since September 11," 377; Dean, "Publicity's Secret," 626.

<sup>136</sup>Judith S. Trent et al., "Diversity in 2008, Homogeneity in 2012: The Ideal Candidate Revisited," *American Behavioral Scientist* 57, no. 11 (2013): 1539-1557.

<sup>137</sup>Dean, "Publicity's Secret," 624. Also Dean, "Secrecy since September 11," 377. See also Cohen, "The Inverse Relationship between Secrecy and Privacy," 892: the dialectical relationship between new technological methods of managing risks and risks that new technological methods create. The perception that the public is no longer obligated to act may also be increased by the relative success of official reforms in favor of legal equality, such as the civil rights movement and efforts at gender equality.

buy . . . ) becomes both routine and central."<sup>138</sup> When the entirety of social experience is bound up in the constant exposure and publicity of private information, the implied political ideal of the public's "right to know" begins to appear as a right to know everything immediately. Routine publicity reinforces a false, "all-or-nothing" dichotomy between transparency and secrecy, in which something that is not immediately available is by default hidden, concealed, shameful.<sup>139</sup> When information is not available or even denied, conspiracies "offer answers to unanswerable questions . . . without ever reaching a point of clarity or 'ultimate truth.'"<sup>140</sup> There is no end, no secret that can be revealed, that would convince the public the ultimate truth has been exposed; rather, another conspiracy hides behind the proffered truth.

The prevalence of networks of actors collaborating to achieve political goals can obscure how and when meaningful collaboration occurs and when unique network dynamics affect the outcome.<sup>141</sup> The operation of networks introduces elements of secrecy at vital points in the decision-making process, such that an individual can join a group and yet have no idea how the policy decisions of the group materialize. Additionally, group dynamics and network structures, so common in the information age, can regulate and limit participation and speech. As actors rely on networks to represent them, freedom of speech is curtailed in the pursuit of uniformity of vision and thus participants may self-censor.<sup>142</sup> The network dynamics that conceal process and

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<sup>138</sup>Gilbert, 23.

<sup>139</sup>Solove.

<sup>140</sup>Horn, 119.

<sup>141</sup>Camilla Stivers, "The Ontology of Public Space: Grounding Governance in Social Reality," *American Behavioral Scientist* 52, no. 7 (March 2009): 1095-1108.

<sup>142</sup>Joan Roelofs, "Networks and Democracy: It Ain't Necessarily So," *American Behavioral Scientist* 52, no. 7 (March 2009): 990-1005.

outcome also contribute to the sense of conspiracy and suspicion in society, and fuels the perception that mystery is heightened by unmasking and revelation.<sup>143</sup>

The right to know is predicated on the idea, discussed previously, that the public must be well-informed in order to provide consent to government. The First Amendment supports the right to know as an ideal, not as an enforceable right, however. The public is at "liberty to demand," though the government faces "no obligation to fulfill."<sup>144</sup> The originally abstract ideal has been translated through infotainment and technoculture into a concrete right and the duty of the government to facilitate. The society of spectacle and revelation pushes instead for greater revelation, despite such transparency efforts as the Freedom of Information Act. The problem with the public's right to know, however, is a series of lingering questions: "Who is the public, what do they have a right to know, why is there such a right?"<sup>145</sup> Where is the limit of the right to know? In the case of Wikileaks, did the world's public have the right to know private details of agreements between individuals and the U.S. government? Who decides where the right to know begins and ends—an individual insider allegedly trying to assuage his conscience, a Supreme Court justice who is a part of the government and may tend to preserve executive power, or the bureaucracy that originates and controls the information? The development of national security culture after the 1980s would privilege the bureaucracy, although this feeds the likelihood that an individual within the bureaucracy may decide to leak information.<sup>146</sup> The opportunity to have a

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<sup>143</sup>Michael Taussig, "Viscerality, Faith, and Skepticism: Another Theory of Magic," in *Magic and Modernity: Interfaces of Revelation and Concealment*, ed. Birgit Meje and Peter Pels (Stanford, CA: Stanford University Press, 2003), 272-306.

<sup>144</sup>O'Brien.

<sup>145</sup>*Ibid.*, 592-604.

<sup>146</sup>James Der Derian, *Antidiplomacy: Spies, Terror, Speed, and War* (Cambridge, MA: Blackwell Publishers, 1992), 73-91.

legitimate conversation about the legality and acceptability of certain programs is then lost, decided not by the people but by individual leakers.<sup>147</sup>

Information made available without analysis or evaluation fulfills the spectacle demanded by the American audience of citizens, though the information is fed and filtered through the traditional and new media. The types of debates that occur in the public domain, whether political or scientific, can be significantly limited by the type of knowledge that a society chooses to create.<sup>148</sup> A top-down power structure can control and direct research and analysis efforts and shape the overall picture of reality, although participatory media can influence global information flows and affect the overall production and distribution of attention and spectacle.<sup>149</sup>

As the public engages as an audience rather than independent actors, the influence of spectacle emphasizes government secrecy and elevates revelation and conspiracy as counters to concealment. Celebrity spectacle plays a growing role in political campaigns and elections, as individual politicians rely on celebrity to provide legitimacy to political messages. Blurring the lines between information and entertainment further undermines government legitimacy and the dependability of official information.<sup>150</sup> Entertainment-as-information creates space for conspiracy to thrive, as reality blends between movies and cable news shows. A focus on uncovering plots and conspiracy predominates within the American public, changing the nature of trust in journalism, contributing to a politics of conspiracy within and without government, and

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<sup>147</sup>Davidson, 22.

<sup>148</sup>Daniel Sarewitz, "Normal Science and Limits on Knowledge: What We Seek to Know, What We Choose not to Know, What We Don't Bother Knowing," *Social Research* 77, no. 3 (Fall 2010): 997-1010.

<sup>149</sup>Zeynep Tufekci, "'Not this One': Social Movements, the Attention Economy, and Microcelebrity Networked Activism," *American Behavioral Scientist* 57, no. 7 (2013): 848-870.

<sup>150</sup>J. Gregory Payne, John P. Hanlon, and David P. Twomey III, "Celebrity Spectacle Influence on Young Voters in the 2004 Presidential Campaign," *American Behavioral Scientist* 50, no. 9 (May 2007): 1239-1246.

feeding ideas of overarching government conspiracies to the detriment of the American people.<sup>151</sup> The media plays a vital role as arbiter of information between the people and the government, and can influence the nexus between factual information and entertainment, conspiracy and revelation.

### The Media

How information is presented affects its credibility and authority, based not only on the media of transmission but the perceived expertise of the author. Expertise in the digital age may depend more on the ideological co-orientation between the sender and the receiver, rather than traditional authority and expertise.<sup>152</sup> This is particularly relevant as journalists act as mediators between the public and politicians, framing political campaigns in terms of increasingly polarized ideological difference and filtering information prior to public consumption.<sup>153</sup> The media is thus situated between secrecy and publicity, influencing the struggle over boundaries of openness and secrecy in the public sphere.<sup>154</sup> The power and influence of the traditional media is both challenged and supplemented by the increasing visibility and role of new and social media.

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<sup>151</sup>Fenster, *Conspiracy Theories: Secrecy and Power in American Culture* (2008), discusses the public obsession with uncovering plots and conspiracies (118-154) and the rise of conspiracy politics (23-51) in which conspiracy and revelation serve a central purpose in political campaigns and discussion. Jack Bratich, *Conspiracy Panics: Political Rationality and Popular Culture* (2008) discusses the role of trust and conspiracy in online journalism (79-96), as well as the pathology of 9/11 conspiracy theories which blame the U.S. government for the attacks on the Twin Towers. Conspiracy provides a frame through which to view public mindset and trust in government.

<sup>152</sup>Hans K. Meyer, Doreen Marchionni, and Esther Thorson, "The Journalist behind the News: Credibility of Straight, Collaborative, Opinionated, and Blogged "News," *American Behavioral Scientist* 54, no. 2 (October 2010): 100-119.

<sup>153</sup>Matthias A. Gerth and Gabriele Siegert, "Patterns of Consistence and Constriction: How News Media Frame the Coverage of Direct Democratic Campaigns," *American Behavioral Scientist* 56, no. 3 (2012): 279-299.

<sup>154</sup>Agnes S. Ku, "Boundary Politics in the Public Sphere: Openness, Secrecy, and Leak," *Sociological Theory* 16, no. 2 (July 1998): 172-192.

Traditional media is still a profession and still responsible for the veracity and accuracy of the reports it publishes as well as for the ramifications of publishing those stories. The dialogue and discussion that occurred between the federal government and the New York Times over the publication of the Pentagon Papers presents a valuable example of how the press traditionally functions as a check on government: the NYT measured the potential damage to U.S. prestige and military capability were the Pentagon Papers to be published and weighed that against the public's 'right to know.' The government responded, the NYT challenged that response, and eventually the Supreme Court cleared the publication of the Pentagon Papers, along with commentary from NYT journalists, as a necessary contribution to the public debate about America's use of the military abroad.<sup>155</sup>

Traditional media, when acting as a check on government power as the "fourth branch," can thus serve to "expose public mismanagement and keep power accountable."<sup>156</sup> The executive and legislative branches attempt to conceal information, while the press attempts to uncover that information and, if successful, to publish it.<sup>157</sup> Somewhat problematic for American ideals is the conflict between exposure for purposes of scandal and spectacle, and the openness and transparency necessary for democratic debate. Media culture in the U.S., affording status as the informal "fourth branch" of government, is assigned "independent normative value because of the greater 'openness' it fosters."<sup>158</sup> Whether the media actually contributes to openness and transparency in an objective sense is irrelevant.

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<sup>155</sup> Arendt, "Lying In Politics: Reflections on the Pentagon Papers."

<sup>156</sup> Martin E. Halstuk, "Policy of Secrecy, Pattern of Deception: What Federalist Leaders thought about a Public Right to Know," *Communication Law and Policy* 51, no. 7 (Winter 2002): 57.

<sup>157</sup> Henkin, 278.

<sup>158</sup> Cohen, "The Inverse Relationship between Secrecy and Privacy," 890.



Traditional news media, such as newspapers and television news, must now compete with the infotainment culture and cable networks feeding a constant cycle of scandal, breaking news, and revelation. News organizations respond to domestic and international stories, forming policy and perception frames often before the government has a chance to formulate an official response.<sup>159</sup> The immediacy of media can thus limit political options by framing and guiding public interest and outrage. Even the emergent trends in news are formulaic and fit into common tropes with "human interest" angles and readily identifiable villains. The lack of political fact-checking and the presence and dissemination of false or questionable political stories does not undermine the credibility of the media during elections, particularly between ideologically aligned media and audiences.<sup>160</sup> Communicative capitalism drives the focus group testing and shaping of nearly every item in the media stream, whether a physical object, commodity, or story.<sup>161</sup> Politicians engaged in the "game of leaks" can also attempt to influence journalistic narratives, however the power of the media to build frames and influence public perception and analysis predominates.<sup>162</sup>

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<sup>159</sup>Holli A. Semetko, "Media and Public Diplomacy in Times of War and Crisis," *American Behavioral Scientist* 52, no. 5 (January 2009): 639-642.

<sup>160</sup>Jeffrey A. Gottfried, Bruce W. Hardy, Kenneth M. Winneg, and Kathleen Hall Jamieson, "Did Fact Checking Matter in the 2012 Presidential Campaign?" *American Behavioral Scientist* 57, no. 11 (2013): 1558-1567. See also Thomas J. Johnson and Barbara K. Kyle, "Still Cruising and Believing? An Analysis of Online Credibility across Three Presidential Campaigns," *American Behavioral Scientist* 54, no. 1 (2010): 57-77, for a discussion of perceived credibility of online news vs. traditional news. Also Tien-Tsung Lee, "Why They Don't Trust the Media: An Examination of Factors Predicting Trust," *American Behavioral Scientist* 54, no. 1 (September 2010): 8-21, contends that three factors influence the degree to which citizens-as-audience trust the news media: first, political ideology and partisanship; second, level of trust in government and fellow citizens; and third, overall view of the economy.

<sup>161</sup>Dean, "Secrecy since September 11," 374.

<sup>162</sup>Regula Hangglie, "Key Factors in Frame Building: How Strategic Political Actors Shape News Media Coverage," *American Behavioral Scientist* 56, no. 3 (March 2012): 300-317.

The new media represents and mis-represents the public, in a dichotomous relationship in that the public is the new media.<sup>163</sup> The traditional media has tapped into the new media as a means of creating immediacy and visceral reaction within infotainment, rather than reasoned analysis, through the Internet's ease of disclosure.<sup>164</sup> The public's reaction, and the reactions and emotions of individuals, are validated as newsworthy even in the absence of any real knowledge or experience. The utility of social media is in collapsing distance and turning the world into a relatively small marketplace of information, though the result may also be that 'virtuality' in conflict and antagonism sends meaning instead into a "media black hole of insignificance."<sup>165</sup> The smaller marketplace for ideas and political organization has consequences for other democracies, both positive and negative; though social media provided opportunities for organization and mobilization during the Arab Spring reform movements, the ubiquity of the new media is leading to the "Americanization" of the electoral process in other countries, particularly as they develop strategies to use mass media and spin doctors.<sup>166</sup>

The proliferation of technology as a means to access the emerging new and social media presents an opportunity to influence politics and policy, as well as presenting a new array of tools

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<sup>163</sup>“New media” in this context denotes that which is not part of the traditional, professional media, including but not limited to grass roots Internet news programs, websites devoted to niche subjects and interests that are not peer-reviewed or monitored by a professional organization, and cable programs or publications intending to distribute information outside the standard fora. Social media denotes platforms originally intended to build social relationships, rather than as a means of broadcasting news, but which have since become a means of reporting news and information.

<sup>164</sup>Davidson, 88.

<sup>165</sup>James Der Derian, “A Virtual Theory of Global Politics, Mimetic War, and the Spectral State,” *Angelaki: Journal of the Theoretical Humanities* 4, no. 2 (1999): 56.

<sup>166</sup>Jordi Xifra, “Americanization, Globalization, or Modernization of Electoral Campaigns? Testing the Situation in Spain,” *American Behavioral Scientist* 55, no. 6 (2011): 667-682.

for government to utilize in an attempt to communicate with the public.<sup>167</sup> Technology, in this sense, mediates between secrecy and power structures, not only through disclosure but through obfuscation and concealment.<sup>168</sup> The U.S. State Department's use of popular social media platforms to reach out to the U.S. public, as well as its efforts to protect access to those platforms for protestors during the Arab Spring movement, demonstrate the emerging utility and danger of new media.<sup>169</sup> New and social media contribute to the flood of raw information and data available to the public, though the result is less analytical and more based in spontaneous emotion and impulse.<sup>170</sup> What is problematic for the general public as well as government secrecy is the remarkable permanence of online disclosures; though the Internet is vast enough so as to appear to provide obscurity after interest dies down, in reality there is almost no means of truly erasing something from its online existence.<sup>171</sup> There are also inherently undemocratic aspects of both web infrastructure and management, relying on governments and corporations to provide or deny access based on other, often political or power-based, reasons.<sup>172</sup>

The Wikileaks episode, in which Bradley Manning released a trove of documents stolen from classified networks, demonstrates the operational and analytical differences between the

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<sup>167</sup> Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* (Cambridge: Cambridge University Press, 2006), 199-230.

<sup>168</sup> Jonathan Bach, "Power, Secrecy, Paranoia: Technologies of Governance and the Structure of Rule," *Cultural Politics* 6, no. 3 (2010): 287-302.

<sup>169</sup> Matthew R. Auer, "The Policy Sciences of Social Media," *Policy Studies Journal* 39, no. 4 (November 2011): 709 and 715.

<sup>170</sup> *Ibid.*, 722.

<sup>171</sup> Davidson, 88.

<sup>172</sup> Jodi Dean, *Publicity's Secret: How Technoculture Capitalizes on Democracy* (Ithaca, NY: Cornell University Press, 2002), 156-164.

new and traditional media.<sup>173</sup> Wikileaks, a transparency organization that itself thrives in total secrecy and anonymity, wholesale released the documents without meaningful efforts to mitigate possible negative ramifications for individuals named in the documents.<sup>174</sup> Diplomatic cables and operational files naming individuals who collaborated with the U.S. military were made available to the world. The privacy of those individuals was sacrificed in the name of publicity and the revelation of U.S. government information, revealing the conflict between American ideals of liberty, on the one hand, and privacy, on the other.

Despite the popular American hero narrative for most whistle-blowers and those who challenge the power of the government, leaks should not be equated with whistle-blowing.<sup>175</sup> This distinction may be a fine one but is relevant nonetheless. Citizens should question the motives of these disclosures and subject media to additional scrutiny when they participate in unauthorized disclosures. Transparency as an objective value appears to shield the media from answering to the people about the consequences of unauthorized disclosures and the publication of leaked sensitive information. The defense and security establishment often bears the negative repercussions of these leaks, and must adjust processes and operations to account for the uncertainty of information in the media and public domain.

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<sup>173</sup>Davidson, 80-88 for Wikileaks in historical context, particularly as relates to the Pentagon Papers release. See also Hood 2011 for additional analysis regarding the impact of the Wikileaks documents release. Patricia L. Bellia, "WikiLeaks and the Institutional Framework for National Security Disclosures," *Yale Law Review* 121, no. 6 (April 2012): 1448, examines the social and institutional pressures that contribute to leaks, and reviews the role of Wikileaks as information broken. Bellia also comments on Wikileaks in a First Amendment context.

<sup>174</sup>Davidson, 88.

<sup>175</sup>Rahul Sagar, *Secrets and Leaks: The Dilemma of State Secrecy* (Princeton, NJ: Princeton University Press, 2013).

## The Military

The military, as one of the American institutions charged with projecting American values, struggles to reconcile its very existence with the creed it seeks to defend and promote abroad. Military and defense are also two of the few areas in which most transparency advocates acknowledge secrecy has a legitimate role in even liberal democracies.<sup>176</sup> The military occupies an uneasy space between all of these factors in the system: formed from the people although an increasing minority of Americans actually serve in, or know someone who serves in, the military; funded and reviewed by Congress; lionized or demonized by the media; and ordered into use by the executive. The uneasy relationships between these four meta-actors directly affect the military and its ability to operate as an institution formed by American ideals.

The military, perhaps in response to arguments that the history of the U.S. leans toward no standing army but only well-armed militias, attempts to reinforce American values within its institution. In addition to swearing loyalty to the Constitution and its values rather than a political party or office, the Army publishes Army values. The first of which, loyalty, is defined as loyalty to the U.S. constitution first and the Army second; the other values, to include duty, respect, selfless service, honor, integrity, and personal courage, all reflect facets of American ideals.

Joint Doctrine also states that the branches of the U.S. military "embody the highest values and standards of American society and the profession of arms."<sup>177</sup> Huntington's own argument about objective civilian control of the military being the safest construct for democracy<sup>178</sup> is reflected in the U.S. through the President's position as Commander in Chief and

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<sup>176</sup>Bok, 191-209.

<sup>177</sup>Joint Chiefs of Staff, Joint Publication 1, *Doctrine for the Armed Forces of the United States* (Washington, DC: Government Printing Office, 25 March 2013), [http://www.dtic.mil/doctrine/new\\_pubs/jp1.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1.pdf) (accessed 1 December 2013), Preface, i.

<sup>178</sup>Samuel P. Huntington, *Soldier and the State* (Cambridge, MA: Belknap Press, 1981). Claude E. Welch Jr., "Military Disengagement from Politics: Paradigms, Processes, or Random

the role of the civilian Secretary of Defense in training, manning, and equipping the armed forces. The coercive power of the military makes it a threat to democracy, in political theory, yet a weak military also poses a threat to democracy through possible failure to protect sovereign territory. Respect for civilian control of the military is so inculcated in the American military as a means of minimizing the potential threat of military strength that to even pose the potential for an armed coup or military takeover of the government appears absurd. While the potential for military coups exist in a variety of other states, for the military to challenge its civilian leadership in the U.S. would require a significant schism between the institutions of the government and the values reflected by the military. The continuing tensions within the American political system and social institutions may create the conditions necessary for that type of schism to become a possibility.

The military and other government institutions are at the distinct disadvantage that the ideology of American liberal democracy formed before the institutions were created to enforce it. Unlike in other countries, such as Great Britain, where institutions such as the military and intelligence sectors persisted in similar forms through substantial changes in governance, the American military and security sector was created to be restrained by its governing ideology. Thus the absence of an Official Secrets Act in America. As Justice Stewart wrote, "The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act."<sup>179</sup>

The military faces other challenges based on evolving American ideals and the changes in society. Recent conflicts in Afghanistan and Iraq set an unprecedented level of access for the average viewer, with journalists embedded in small military units to provide daily video and audio feedback of war to anyone with access to the Internet. Soldiers and Marines participated in blogs and social media for additional first-hand access, providing what amounted to small video

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Events," *Armed Forces and Society* 18, no. 3 (Spring 1992): 323-342, also discusses differing paradigms of objective civilian control and the interaction with the military.

<sup>179</sup>O'Brien, 618.

glimpses into a reality most Americans will never know. Just as the experience of war is sanitized through technology, despite the brutal representations possible, conflict is itself "virtualized and commoditised as pure war," turned away from a human endeavor into "virtual war."<sup>180</sup>

Even as the military cooperates with traditional and new media, there remains a sentiment in the defense and intelligence communities that conflicts with the virtualized, commoditized society of revelation: to do their jobs properly, they must be free of meddling by courts, Congress, and the public."<sup>181</sup> The civilian government controls when the sword of U.S. power is drawn for use, however military leadership establishes the most effective and efficient means of achieving the strategic objectives set out by policymakers. Influence from non-military entities can adversely impact the military's ability to prosecute and win wars, particularly if the military is being used as a proof of concept for political ideals.

The military also both suffers from and capitalizes on the illusion of American omnipotence, in Huntington's terms, in that every evil in the world is attributable to the Central Intelligence Agency, the U.S. military, or liberal democracy and the capitalism that undergirds it.<sup>182</sup> The efforts to export American ideals and images of its institutions abroad creates a complicated legacy and ties the U.S. to the world far more tightly than the Founders ever could have imagined. The credit for success of democracy or capitalism is rarely afforded the U.S. and her institutions, though the blame for real and perceived failures comes home to roost with unsurprising frequency. American ideals create an open, plural state that is open to transnational and international influences, exporting its ideals in an effort to spread liberal democracy, equality,

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<sup>180</sup>Der Derian, "A Virtual Theory of Global Politics, Mimetic War, and the Spectral State," 56; Der Derian, *Antidiplomacy*, 173-202.

<sup>181</sup>Weaver and Pallitto, 89.

<sup>182</sup>Huntington, "American Ideals versus American Institutions." See also Laura Jones, "The Commonplace Geopolitics of Conspiracy," *Geography Compass* 6, no. 1 (January 2012): 44-59, for a discussion of the disparate actors and groups that privilege American omnipotence and role in global conspiracies.

and liberty. Unfortunately, transnational influences can have both positive and negative consequences for U.S. society. Between the projection of U.S. social ideals abroad and the threat of American military power globally, heterogeneous political actors are converging around the conviction that a broad U.S. government conspiracy exists to dominate, restructure, and eliminate competing ways of life.<sup>183</sup>

The military must operate overseas with allies and coalition partners in an environment that includes the same forces at work in the media and public in the U.S., although with the complicating influences of differing cultures, languages, and religions. The military must remain representative of American ideals without sacrificing capability to achieve its mission. Efficiency and security in preparing and prosecuting war requires secrecy; military operations require limiting transparency, the individual sacrifice of liberty in service to a larger organization, and other limitations on traditional American ideals.

## CONCLUSIONS AND EMERGING TRENDS

The institutions engaged in this assemblage fight responsibilities and obligations as well as contradictions in the system, including those intended by the Framers and the consequences of changing social and technological trends. The resulting push-pull within American democracy cannot continue unabated, particularly with the external forces of the international community and socio-demographic changes. Much as an over-extended rubber band will either break or snap back to its original place, the internal tensions of the American political system will either reach a breaking point or be manipulated by competing factors to relieve some of the tension. What this may look like remains undetermined and perhaps unknowable, however some outcomes may be worth examining.

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<sup>183</sup>Jones, 44-59.



### National Crisis

Cynics may point at the movie *Wag the Dog* and its Hollywood creation of a false military crisis to facilitate a failing politician's reelection, however a real (or imagined) major national threat could temporarily alleviate some of the tensions at work in American society. The 9/11 attacks provided a central rallying point around which the American people could unify, and provided legitimacy and power to the government in its efforts to protect and defend the U.S.<sup>184</sup> The specter of terrorism and the threat of another catastrophic attack shifted the majority of American society toward deeper secrecy, as many people were willing to sacrifice some privacy and transparency in order to prevent additional attacks. The government seized this opportunity to enact far-reaching secrecy and security laws, acquiring capabilities that would not have been willingly ceded a few months earlier. The institutions of government, particularly in intelligence and law enforcement, took a drastic step away from American ideals, perhaps rightly in order to meet the perceived national crisis. The consequences, only a few years later, were drastic.

Society continues to struggle with the laws enacted in the name of security, such as the USA PATRIOT ACT, and the measures utilized by the intelligence community and military in the Global War on Terrorism, such as extraordinary rendition and enhanced interrogation. The ramifications of these actions and policies are not fully understood either for their impact on international relations or internal to the American conversation about democracy and what it means to be American.

With the relatively recent national memory of 9/11, another catastrophic terrorist attack could very well trigger a knee-jerk return to deep secrecy and draconian security measures,

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<sup>184</sup>This national catastrophe occurred in real time on national as well as international television, providing both the immediacy and close proximity required for publicity. The presence of the American-public-as-audience during the actual event should have mitigated conspiracy theories as to the occurrence of the attacks; however, that is notably not the case. Rather, a variety of 9/11 conspiracies flourish domestically and internationally, including whether the CIA and American military colluded to hijack the airplanes and bomb the Pentagon.

perhaps even more striking than that which occurred after 9/11. We should expect, however, that the backlash would be equally dramatic. Attempting to return to homeostasis, the public and media could move towards shallow secrecy beyond the point at which the government could acquiesce. The government, if the past is any indication, would likely hold on to its deep secrets with more motivation than ever, resisting efforts to reintroduce transparency based on the real historical ‘trend’ that the last time transparency ruled, a catastrophic security failure occurred. The potential excesses and violations of the law that could occur in the name of security would also need to be covered up. Both sides would be technically correct, and yet less likely than ever to meet or make meaningful compromises. The internal contradictions would be further exacerbated and introduce even greater tension to the system, to the point where something significant, possibly structural, would need to change for the U.S. to continue as a viable government.

### The Garrison State

Writing at a time of national economic crisis and unraveling international security, Laswell outlined a future in which the specialist in bargaining, the capitalist politician, is replaced as the primary power broker in society by the specialist in violence, the soldier.<sup>185</sup> Absent a significant catastrophic event such as a terrorist attack, current trends could continue with the reification of the garrison state, in which military priorities and security "have first claim on their nation's resources."<sup>186</sup> In this scenario, some elements of the assemblage would likely drag toward deeper secrecy in the interest of protecting assets and patents, particularly in the legislative and executive branches but also the economic interests driving the military-industrial

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<sup>185</sup>Harold D. Laswell, "The Garrison State," *American Journal on Sociology* 46, no. 3 (January 1941): 455-468.

<sup>186</sup>Milton J. Esman, "Toward the American Garrison State," *Peace Review: A Journal of Social Justice* 19, no. 3 (2007): 407-416.

complex. Media and entertainment would glorify military engagements and create heroes of personable military officers.<sup>187</sup> Without a clearly-defined external threat, however, it is unlikely that all Americans would sit quietly by while the garrison state grows entrenched, although significant portions of Americans would remain more interested in video games, reality television, and their personal tax status than challenges to American democracy.

Despite the disinterest of the silent majority or the tyranny of the vocal minority, there would likely be a backlash as some people object to the abrogation of American traditional values. If the reification of the garrison state proceeds far enough before this outrage gains power, however, the security sector would likely have sufficient clout and awareness to force those elements of the public seeking change underground. Thus we may see a shift in the preferences for security or a bifurcation of the 'people' into those who are content with spectacle and revelation in the current system, and those who seek deeper secrecy as a counter to the power of the government and as the means to conspiracy and perhaps to insurrection. Competing concepts of the 'public' and what it means for popular sovereignty may argue this is unlikely based on current governance structures, as with the contention that it would be impossible for the American people to cooperate enough to enact meaningful change, however trends toward anti-government groups and discontent with current structures could reach a point of dramatic upheaval. Previous reevaluations of the American political system depended on armed challenge. The tree of liberty, after all, must be refreshed from time to time with the blood of patriots and tyrants.<sup>188</sup>

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<sup>187</sup>Der Derian, *Antidiplomacy*.

<sup>188</sup>Thomas Jefferson to William Stephens Smith, Paris, 13 November 1787, <http://www.monticello.org/site/jefferson/tree-liberty-quotation> (accessed 1 December 2013).

### The Praetorian Class

Similar to the possible reification of the garrison state, the possibility that recent insider leaks represent a growing tendency with individuals in the security sector. The unintended release of secret government information could become a trend as the members of the security sector find their personal values, driven by the new media and culture of revelation, in conflict with the requirements of their positions. Should insiders increasingly choose to make large-scale revelations of secret information, the likely reaction within the military and defense communities is the implementation of a stricter security clearance process and the creation of regimes of surveillance intended to guarantee that those who are selected for access to sensitive information are the ‘right’ kind of people.

More stringent requirements and vetting will inevitably deny access to the diverse group of people necessary for creative thinking and reform, instead consolidating what has already been identified as a praetorian class of military officers and families as well as a new nobility of intelligence officers.<sup>189</sup> Citizens with backgrounds in the security services may be able to vouch for others who they consider trustworthy, thus allowing access to information through personal connections rather than merit. Because of the nature of bureaucracy and the government employee, this praetorian class is likely to be a-political initially and persistent across partisan power shifts in the executive and legislative branches. Though theoretically a positive development, instead it means the consolidation of immense power in the hands of a few

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<sup>189</sup>The term “new nobility” taken from Soldatov’s commentary on the rise of the FSB under Russian President Vladimir Putin, himself a former KGB officer, and the increased informal and formal power of Russian intelligence officers. These intelligence officers represent a new nobility in Russian society, per Soldatov and Borogan, which allows the manipulation and silencing of media critical to the regime, the re-direction of industry and commerce to serve the intelligence state, and the subsuming of political liberties to intelligence and security requirements. The histories of Russia and the U.S. are sufficient divergent that it is exceedingly unlikely we would see the same type of structures and trends in the U.S., however the emergence of a privileged intelligence and military class is not without precedence in the West. Andrei Soldatov and Irina Borogan, *The New Nobility: The Restoration of Russia's Security State and the Enduring Legacy of the Kgb* (New York, NY: PublicAffairs, 2010).

unelected bureaucrats. Though the U.S. military's history of objective civilian control certainly inoculates against the potential for a military coup, the separation of classes based on occupation and access does not bode well for a country founded on equality and freedom of affiliation. Exacerbating the growing divide between military and civilian is unlikely to resolve the existing tensions between deep secrecy and shallow secrecy.

Particularly interesting is the potential confluence of scenarios, as with the concentration of military bases and personnel in the south and mid-west of the U.S. and a praetorian class concerned with their interpretation of American ideals. Benson's 2012 article "Full Spectrum Operations in the Homeland" struck a nerve in the military as well as political communities when Benson raised the question of how and whether the U.S. military would react if called upon to conduct security and stability operations within the U.S.'s borders.<sup>190</sup> One of the more striking observations Benson raised, despite some of the legitimate critique of the article, was the potential that portions of the military would refuse direct orders to pacify an American resistance movement that espoused core American ideals. Perhaps one of the consequences of isolating military bases in the same locations where home-grown radical political parties foment is the inculcation of some of those radical values among the praetorian class – perhaps setting the conditions for an insurrection, first in spite of and then perhaps with the support of the military.

#### Paper Tiger, Paper Eagle

Separate from these previous issues is the potential that the military will eventually devolve into a paper tiger, bloated but ineffective. Trends in the twenty-first century indicate that the partisan interests of member of Congress may drive support for military acquisitions and expenditures, and may create opposition to base closings and realignments. If individual

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<sup>190</sup>Kevin Benson and Jennifer Weber, "Full Spectrum Operations in the Homeland: A "vision" of the future," *Small Wars Journal*, July 25, 2012, <http://smallwarsjournal.com/jrnl/art/full-spectrum-operations-in-the-homeland-a-%E2%80%9Cvision%E2%80%9D-of-the-future> (accessed 27 March 2014).

Congressmen and Senators benefit from the presence of a military base or defense contractor in their jurisdiction, they are unlikely historically to support cutting off that source of support for their constituents.<sup>191</sup> To do so would run the risk of eliminating powerful blocs of the voting public, further jeopardizing the incumbent's ability to achieve reelection. A consequence is the persistence of weapons and transportation systems that the military no longer wants or needs, yet is stuck with because of the intersection of the military-industrial complex, and the consolidation of military bases in communities with powerful Congressional incumbents.<sup>192</sup>

As the military attempts to streamline its personnel and weapons systems, relying on high tech solutions and experienced leadership, the Department of Defense has, and likely will continue to, run into opposition from the legislative branch. The perverse incentives of the legislative branch in this case create the possibility of a military weighed down by unwanted weapons systems and platforms, by bloated doctrine attempting to fight a changing hybrid threat with the technology forced on it, and massive bases arrayed predominantly across the Southern and Midwestern portions of the U.S. When the military attempts to prepare for every threat, it will find itself unprepared for any threat, particularly if handicapped by equipment that no longer serves a meaningful purpose within its doctrinal constructs. The continued publishing of unclassified national security and military strategies provides adversaries and allies alike a window into the reality of American military capabilities, even without the insider leaks of classified documents, and could embolden traditional state adversaries as well as non-state threats seeking to attack the paper eagle.

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<sup>191</sup>Bloomberg articles: <http://www.bloomberg.com/news/2013-02-19/pentagon-budget-stuck-in-last-century-as-warfare-changes.html>; <http://www.bloomberg.com/news/2013-02-20/defense-cut-hypocrisy-makes-gop-converge-with-democrats.html> (accessed 1 December 2013).

<sup>192</sup>A secondary effect is the separation of military families and personnel from the rest of the population, such that Americans no longer have personal interactions or knowledge of military life, but view it as part of an 'other' experience of America. This may contribute to the development of a praetorian class or a garrison state.

### Dollars and Secrets

Somewhat less nihilistically, other external forces could potentially affect the system, particularly economically. The massive costs for personnel and research and development currently eat up large portions of the defense budget and drive the current efforts at personnel reduction and the redesign of American military systems.

With growing budget constraints and the bills from Iraq and Afghanistan affecting the overall economic climate, the defense sector may find that maintaining deep secrecy for all but a few key programs is simply too expensive. Costs for clearing personnel to access those programs, securing the physical locations, maintaining systems adequate to store deeply secret information, and other accoutrements to effectively maintain deep secrecy take time, money, and personnel to secure. Though the cost of moving from deep secrecy to shallow, in the review and evaluation of Freedom of Information Act requests and transparency projects, may appear steep, the initial up-front costs would likely pale in comparison to the long-term necessity of a deeply secret state. The move to shallower secrecy may be determined by the bottom line rather than security requirements or concerns over liberty.

### It's Not Me, It's You

Finally, in an effort to appease open government advocates and the general public, the government may move toward shallower secrecy on its own. If free expression is a founding principle of our democracy and "sunlight" the best means of purifying that principle, then "it seems only logical to think more sunlight and more information will make our public discourse purer and more democratic."<sup>193</sup> Attempting to reconcile the contradictions between American ideals and its own institutions, the executive and legislative branches might opt for more transparency and openness in programs and communication. Even if this happens in good faith

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<sup>193</sup>Cohen, "The Inverse Relationship between Secrecy and Privacy," 888.

and with every intention of fulfilling the obligations for free and fair communication, there are potential consequences for social dynamics in the U.S.

There exists a point at which the government can no longer continue to disclose information. There must remain some secrets—if only to protect the people who protect America. This may include military programs, war plans, or intelligence sources. But through pursuing large scale transparency or sunshine policies, the government may condition the public to believe that anything and everything can be shared, reinforced by the society of spectacle and the exhortations of external actors who seek a relative advantage over the U.S.'s military might. When the government inevitably hits the point at which it can no longer share, this could evoke a significant reaction from the people, particularly if the people no longer believe the government is acting in good faith. The perception that there is always something more to be known and disclosed will no doubt continue to haunt the relationship between the people and the government. Only through the long-term rebuilding of trust in government can there be hope for meaningful dialogue on the meaning of American ideals and how they are reflected by American institutions.

### *Après le deluge . . .*

None of the above scenarios are inevitable. Drastic political or economic changes may obviate the circumstances that contribute to all or any of these potential futures, and the U.S. may find itself on a wildly different trajectory. Should everything remain as it appears in early 2014, however, the existing contradictions in American society will likely persist and continue to exert greater tension as we struggle to reconcile American ideals with American institutions. The military, as one of the institutions most caught between what America does and what it believes itself to be, will continue to balance between the demands of the government, the threat of external adversaries, and the expectations and demands of the citizens it protects. Building public trust in the military and Department of Defense alone, in the absence of greater trust in the federal



government, could present complications for objective civilian control if the public trusts military officers more than politicians.

That said, resurrecting public trust in government institutions is a small step toward reconciling eighteenth-century institutions with the changing ideals of American society. Considerations of shallow and deep secrecy, and the necessity of both or neither, could also contribute to an easing of tension between government institutions and the media. A clear, nonpartisan and non-hysterical conversation about potential current and future threats facing the U.S., whether external or internal, would be useful for debating the utility of the security services and military, and what their future role should be in American society. Guarding against some of the worst futures envisioned for the American hegemon means guarding against a garrison state and praetorian class, encouraging a diversity of views despite the possible threat of insider unapproved disclosures, reforming institutions based on the current needs of the people rather than how equities divide between politicians, and trading meaningless reality revelation for true disclosure and dialogue.

The Framers of the Constitution intended a degree of competition between the branches of government in order to guarantee a balance of power and to limit the power and efficiency of the government. The conflicts described in this monograph arise as a result of structural pressures and institutional equities, partially as intended by the Framers and partially as a result of a changing environment. The structural conflict intended by the Framers was based on 18th century populations, technology, information, education, and international relations. The Framers operated with social distinctions of the public supposed to know and the public supposed to believe, and also viewed government secrecy as belonging to the realm of arcanum. The dissolution of the public supposed to believe framework and the dominance of secretum in the secrecy debates significantly changes the function and output of existing structures. This, in

combination with changes to the fundamental social and institutional makeup of American society, results in previous structural balances failing to function as intended by the Framers.

Rather than allowing the “balance of power” construct to become pathology instead of political theory, the U.S. government should evaluate the real consequences of the political system continuing as it was designed by 18<sup>th</sup> century thinkers. That the Framers intended friction within government should not be the end of the debate in modern America: the Framers just as certainly could not have foreseen the consequences of sequestration, international hegemony, and the professionalization of politics to the absurdity of partisanship as it exists in Washington in the modern day. The Framers also built the possibility of change into the Constitution, such that it is a living document, and the American government should be willing to utilize this greatest strength of the founding document. Exercising the ability to change the structure and responsibilities of each branch of government should remain a possibility in modern American governance. The genius of the Framers manifested in two powerful ways: first, that they foresaw the dominance of executive power and sought to balance that power; and second, that they foresaw they could not foresee everything, and created sufficient flexibility in the system of governance to allow the Constitution to adapt as society changed. Society has changed. Perhaps it is time for the structure of American government to change as well, to better reflect American ideals in the modern age.

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